CONFLICT OF INTEREST REVIEW PANEL

REPORT ON CONFLICTS OF INTERESTS RULES FOR CABINET MINISTERS, MEMBERS OF THE LEGISLATIVE ASSEMBLY AND SENIOR PUBLIC SERVANTS

SUMMARIES

February 1990

90-03512/

CONFLICT OF INTEREST REVIEW PANEL

Table of Contents

PART I 1

1. EXECUTIVE SUMMARY 1
    - A. MINISTERS AND MLAS 1
    - B. SENIOR PUBLIC SERVANTS 4

2. SUMMARY OF PROPOSALS 5
    - A. A CONFLICTS OF INTERESTS SYSTEM FOR MINISTERS AND MLAS 5
        - (1) OBJECTS OF A CONFLICTS OF INTERESTS SYSTEM 5
        - (2) THE ETHICS COMMISSIONER 5
        - (3) ETHICAL DUTIES OF MINISTERS AND MLAS 7
        - (4) DISCLOSURE OF FINANCIAL INTERESTS 10
        - (5) ALBERTA ENERGY COMPANY SHARES AND SECURITIES IN COMPANIES INCORPORATED OR ACQUIRED BY THE GOVERNMENT AS VEHICLES OF GOVERNMENT POLICY . . 13
        - (6) MINISTERS' AND MLAS' DEALINGS WITH THE GOVERNMENT 13
        - (7) ECONOMIC ACTIVITIES OF MINISTERS 14
        - (8) INFORMATION AND ADVICE FOR MINISTERS AND MLAS . . 16
        - (9) INVESTIGATION, REPORT AND SANCTION 18
        - (10) REFERENCE TO THE ETHICS COMMISSIONER BY A MINISTER OR MLA 22
        - (11) RESTRICTIONS ON ACTIVITIES OF FORMER MINISTERS . . . 22
        - (12) IMPLEMENTATION OF REVIEW PANEL'S RECOMMENDATIONS 24
    - B. A CONFLICTS OF INTERESTS SYSTEM FOR SENIOR PUBLIC SERVANTS 25

CONFLICT OF INTEREST REVIEW PANEL

REPORT

PART I

1. EXECUTIVE SUMMARY

A. MINISTERS AND MLAS

In this report, the Conflict of Interest Review Panel

- concludes
  - that ministers and MLAs take a responsible and ethical approach to the exercise of their powers, but
  - that the present system of dealing with the possible conflicts of interests should be extended because of
    - the increasing complexity of public affairs
    - the increasing need to maintain public confidence in the integrity of the institutions of government
- recommends that section 31 of the *Alberta Energy Company Act*, which permits MLAs who own Alberta Energy Company shares to vote on matters affecting the company, be repealed

The Review Panel proposes that an Ethics Commissioner selected by the Legislative Assembly be appointed to administer the system. The Ethics Commissioner will

- supervise the proposed system for disclosure of financial interests of ministers and MLAs and their families

- give authoritative advice to ministers and MLAs about their ethical duties

- provide the Legislative Assembly, after investigation, with reports and recommendations about allegations of breaches of ethical duties by ministers and MLAs

- have many powers to make adjustments so that complying with the conflicts of interests system will not cause unnecessary hardship in individual cases.

Other components of the conflicts of interests system would be

- the laying down by statute of ethical duties which recognize that public office is entrusted to ministers and MLAs for the benefit of the public

  - and include duties

    - to carry out their offices so as to maintain public confidence and trust

    - not to exercise powers which might advance the privates interests of themselves or their families

    - not to use inside information or influence for private benefit

    - not to accept gifts and benefits related to their offices

- a system of disclosure of financial interests involving

  - complete confidential disclosure to the Ethics Commissioner of the financial interests of themselves, their spouses and minor children

    - public disclosure by the Ethics Commissioner of information sufficient to allow the public to satisfy itself that ministers and MLAs are carrying out their ethical duties, which will usually identify all financial interests but not give amounts or values

- the use of properly safeguarded blind trusts for publicly traded securities and similar investments only

- a system for dealing with allegations of breaches of ethical duties under which

    - the facts will be investigated by or under the supervision of the Ethics Commissioner and reported to the Legislative Assembly

    - final decisions will be made by the Legislative Assembly

The Review Panel proposes that the following special provisions apply to ministers:

- restrictions on ministers

    - holding shares in public companies

    - engaging in employment or businesses likely to cause conflicts with their duties,

- prohibiting former ministers, for a year, unless exempted by the Ethics Commissioner, from

    - soliciting or accepting, on anyone's behalf, contracts or benefits from any department or agency with which the former minister had significant official contact during the last year of office

- accepting employment with an employer with whom the former minister had significant official dealings during the last year in office

- advising or acting in connection with any matter on which the former minister had acted or advised while in office

The Review Panel propose that these provisions be incorporated in revisions of the *Legislative Assembly Act*, a draft of which is included in the report.

B. SENIOR PUBLIC SERVANTS

The Review Panel proposes, in connection with deputy ministers and board officials appointed under the *Public Service Act* by order in council, and also in connection with assistant deputy ministers

- that the existing *Code of Conduct and Ethics for the Public Service of Alberta* be continued and updated as required

- that a financial disclosure system similar to that proposed for ministers and MLAs apply to them but be administered by the Public Service Commissioner

- that for one year lobbying of a department or agency with which the senior public servant had significant official dealings within the last year of service be prohibited unless the Public Service Commissioner makes an exemption.

The Review Panel proposes that ministers' executive assistants and chiefs of staff should be required to make complete confidential disclosure of their financial interests to their ministers but that they should not otherwise be brought under the proposed conflicts of interests system.

The report gives extensive reasons for the Review Panel's proposals. It includes in appendices the relevant Alberta legislation and guidelines and reviews of some of the more important materials considered by the Review Panel.

2. SUMMARY OF PROPOSALS

A. A CONFLICTS OF INTERESTS SYSTEM FOR MINISTERS AND MLAS

(1) OBJECTS OF A CONFLICTS OF INTERESTS SYSTEM

Public affairs have become more complex. The public has become less willing to accept official assurances of the integrity of government institutions. These circumstances make it imperative that Alberta adopt a more extensive conflicts of interests system for elected representatives.

Recommendation 1

The Review Panel recommend that a more comprehensive conflicts of interests system be established for ministers and MLAs in accordance with the Review Panel's later recommendations.

Recommendation 2

The Review Panel recommend that the Alberta conflicts of interests system for Alberta ministers and MLAs

(a) should recognize that ministers and MLAs take a responsible and ethical approach to the duties of their offices in accordance with established parliamentary traditions;

(b) should give assurance to the public that they do so;

(c) should be designed to minimize the number of conflicts of interests between private interests and public duties and to ensure that when conflicts do arise, ministers and MLAs will not exercise their official powers;

(d) should treat ministers and MLAs fairly and provide assistance for them in discharging their ethical duties.

(2) THE ETHICS COMMISSIONER

A conflicts of interests system which consists of rules alone will either be so loose as to be ineffective or so rigid as to be unsuitable for particular cases. Something more is needed if the system is to protect the public interest, maintain public confidence, and be fair to ministers and MLAs.

The Review Panel therefore recommend that an Ethics Commissioner be appointed to administer the conflicts of interests system which we propose for ministers and MLAs. The Ethics Commissioner will make the conflicts of interests system more fair and workable, help ministers and MLAs to perform their duties, and remove the investigation of conflict of interest allegations from the political forum while leaving the ultimate responsibility with the Legislative Assembly.

As the functions of the Ethics Commissioner will affect MLAs, the Legislative Assembly should select him and have the power of dismissal. The selection and dismissal should be formally effected by order in council.

Recommendation 3

The Review Panel recommend:

(a) that an Ethics Commissioner be appointed to administer the more comprehensive conflicts of interests system which we recommend later in this report;

(b) that the Ethics Commissioner should have the functions, powers and duties set out in our later recommendations;

(c) that the Ethics Commissioner should be chosen by the Legislative Assembly and appointed by order in council;

(d) that the Ethics Commissioner

   (i) should not be a minister or MLA,

   (ii) should not have interests which would conflict with his or her duty as Ethics Commissioner, and

   (iii) could be appointed on a full time or part time basis, depending on the volume of work.

(e) that the Ethics Commissioner should be appointed for a term of 5 years, with eligibility for reappointment, and be subject to dismissal by order in council at the request of the Legislative Assembly for disability, neglect of duty, misconduct or bankruptcy.

(f) that the Ethics Commissioner, the Ethics Commissioner's staff, investigators and hearing officers, and persons who make allegations to and provide information and evidence for the Ethics

Commissioner, should be given appropriate protection from legal liability.

(Draft legislation, sections 25-31 and 35.23)

(3) ETHICAL DUTIES OF MINISTERS AND MLAS

Ministers and MLAs should be told in understandable terms what ethical standards they are required to meet and what their ethical duties are. This is only fair, and it will encourage adherence to the standards and duties.

Proclaiming the ethical duties of ministers and MLAs, and taking measures to show that ministers and MLAs carry out those duties will show the public that ethical conduct is required from their elected representatives and give them standards by which to assess that conduct.

The standards should be designed to ensure that ministers and MLAs use their powers for the benefit of the public and not of private individuals.

The financial and personal relationships of married couples and their dependent children are so close that the duty of a minister or MLA not to advance his or her own interests should extend to the interests of a spouse, unless their financial affairs have been separated by a separation agreement or court order, and to the interests of a minor child. The duty should also extend to a person with whom a minister or MLA is living in a conjugal relationship outside marriage.

Recommendation 4

The Review Panel recommend that the law state that the office and powers of a minister or MLA are entrusted to the minister or MLA to advance the public interest and are subject to the duties set out in the Review Panel's later recommendations.

(See draft legislation, section 31)

Recommendation 5

The Review Panel recommend that the law state that ministers and MLAs are under the following general ethical duties:

(a) a duty to exercise their offices and powers for what, in their perception, is for the benefit of the public.

(b) a duty not to exercise their offices or powers for private benefit.

(c) a duty to exercise their offices and powers in such a way as to maintain public confidence in the institutions of government.

(See draft legislation, section 32)

There are some more specific rules which the law should set out so that ministers and MLAs who follow them may avoid conflicts of interests situations.

Recommendation 6

The Review Panel recommend that the law state that ministers and MLAs are under the following specific duties:

(a) a duty to perform the minister's or MLA's duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in his or her integrity, objectivity and impartiality.

(b) a duty not to take part in any decision, action, or course of official conduct, which might affect the private interests of the minister or MLA or those of a spouse or minor child.

Where a matter requiring such a decision comes before the Legislative Assembly or the cabinet, as the case may be, the minister or MLA is under a duty to declare his or her interest and withdraw from the meeting without voting or participating in the consideration of the matter.

Where such a matter requires a decision from a minister, the minister should request another minister to deal with the matter.

These duties do not apply when the private interest of the minister or MLA is shared with the public generally or a broad class of the public.

(c) A duty not to use the minister's or MLA's position or powers of office to influence the Government or a department or agency for the benefit of the minister or a spouse or child, or, except in the performance of public duties (including normal constituency activities), for the benefit of any other person.

(d) a duty not to use or communicate for the benefit of the minister or MLA or a spouse or child, or, except in the performance of public duties, for the benefit of any other person, information acquired by the minister or MLA in the course of his office and not available to the public.

(e) a duty not to accept a fee, gift or other benefit that is connected directly or indirectly with the performance of duties of office, except

(i) a salary and other payments prescribed by law, and

(ii) a gift or personal benefit that is received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office, if the value is $200 or less. If the value exceeds $200, the minister or MLA should be able to keep the gift or benefit if the Ethics Commissioner approves, but the gift or benefit should be included in the public financial disclosure statement provided for in recommendations made later in this report

(See draft legislation, section 33)

Recommendation 7

The Review Panel recommend that the duties of a minister or MLA in relation to his or her spouse under Recommendation 6

(a) do not extend to a spouse with whom a minister or MLA has entered into a separation agreement or whose mutual support obligations and property rights have been dealt with by a court.

(b) do extend to a person with whom the minister or MLA is living in a conjugal relationship outside marriage.

(See draft legislation, section 21(e))

Recommendation 8

The Review Panel recommend that the same duty not to accept fees, gifts or benefits connected directly with the exercise of the office of a minister or MLA should extend to the minister's or MLA's spouse, with the inclusion and exclusion set out in Recommendation 7, and minor children.

(4) DISCLOSURE OF FINANCIAL INTERESTS

Public disclosure of the financial interests of ministers and MLAs enables the public to determine whether or not their official actions have advanced, or might have advanced, their own private interests. The present Alberta disclosure systems should be expanded.

However, the privacy of ministers and MLAs should be respected except where it is overridden by the public's need to know. Ministers and MLAs should make complete disclosure of their assets, liabilities, sources of income and permitted gifts and benefits to the Ethics Commissioner. The Ethics Commissioner should then make public the information which the public needs to know, which will usually include the existence of financial interests but not their values or amounts and will usually exclude items of small amount or value.

Because of the close relationship between many married couples, advancing a financial interest of one spouse often benefits both. Disclosure should therefore include disclosure of the financial interests of the spouses of ministers and MLAs. It should also include disclosure of the interests of the minor children of ministers and MLAs, who are likely to be dependent upon their parents.

Recommendation 9

The Review Panel recommend:

(a) that ministers and MLAs should be required to make public disclosure of the financial interests of themselves, their spouses and minor children, and of private or non-distributing companies in which they, their spouses and minor children, hold interests;

(b) that the same requirements should apply to both ministers and MLAs;

(c) that the public disclosure should include

(i) disclosure of all assets, liabilities and sources of income, but not, unless the Ethics Commissioner decides that the public interest requires it, disclosure of values or amounts of assets, liabilities and sources of income, and

(ii) disclosure of gifts or personal benefits by a minister or MLA or by his spouse or minor children received as an incident of protocol or of the social obligations that normally accompany the responsibilities of the office of the minister or MLA, which exceed $200 from one source in any twelve month period and are retained with the approval of the Ethics Commissioner.

(d) that the following should not have to be included in the public disclosure:

(i) assets, liabilities and interests having individual values of $1000 or less,

(ii) sources of income of less than $1000 per year,

(iii) information identifying a home or recreational property occupied by the minister or MLA or his or her family,

(iv) things used personally by a minister, MLA, or his or their family,

(v) amounts or values of assets, liabilities and interests, unless the Ethics Commissioner, for special reason, thinks an amount or value should be included,

(vi) publicly traded securities and similar assets which are in a blind trust which meets the requirements of Recommendation 14,

(vii) unpaid taxes and support obligations;

(e) that ministers and MLAs should make to the Ethics Commissioner, upon election or appointment and annually and upon material changes thereafter, full disclosure of all assets, liabilities and sources of income, including those exempted from public disclosure but excepting things used personally by them and their families;

(f) that the Ethics Commissioner should be required to prepare and file with the Clerk of the Legislative Assembly, after consultation with the minister or MLA, and his or her spouse, if available, a public disclosure statement for each minister and MLA which will provide the information required under (c) above;

(g) that each minister and MLA should be required to disclose as a separate item the names of his or her spouse and minor children, corporations of which the minister or MLA is a director or senior officer, corporations in which the minister or MLA holds shares (other than co-operatives and credit unions, and not if the shares are publicly-traded shares), partnerships of less than 20 partners in which the minister or MLA or a corporation referred to above is a partner, and persons or groups of persons who are agents of the minister or MLA;

(h) that the Provincial Treasurer should after the end of each year publish a statement of money paid by the Government to each minister and MLA and the persons directly associated with the minister or MLA under clause (g), as is done now under the *Legislative Assembly Act*;

(i) that each minister and MLA should be required to disclose to the Ethics Commissioner, to the extent that he or she knows it, the same information about his or her spouse's financial interests as the minister or MLA is required to disclose about his or her own financial interests;

(j) that the Ethics Commissioner should include in the minister's or MLA's public disclosure statement the same information about the minister's or MLA's spouse as the minister's or MLA's public disclosure statement will include abut the minister or MLA, though the Ethics Commissioner should have a discretion to exclude spousal information which will cause special hardship to a spouse unless disclosure is clearly required by the public interest;

(k) that where a minister or MLA has entered into a separation agreement with his or her spouse, or if their matrimonial property and support obligations have been dealt with by a court, the disclosure obligations relating to the spouse's financial interests should not apply;

(l) that the recommendations made with respect to a spouse should apply to a person with whom a minister or MLA is living with in a conjugal relationship outside marriage.

(m) that the Ethics Commissioner should report periodically to the Legislature the names of ministers and MLAs who have made proper disclosure and the names of those who have not.

(See draft legislation, sections 34-35.4)

(5) ALBERTA ENERGY COMPANY SHARES AND SECURITIES IN COMPANIES INCORPORATED OR ACQUIRED BY THE GOVERNMENT AS VEHICLES OF GOVERNMENT POLICY

Section 31 of the *Alberta Energy Company Act* provides that the right of an MLA to participate in and vote on any matter relating to the Alberta Energy Company Ltd. is not affected by the MLA's ownership of shares in the company.

In the Review Panel's opinion, there is no reason, now or for the future, to except ministers and MLAs who own shares in the Alberta Energy Company Ltd. from the general rule that a minister or MLA should not take part in decisions and actions affecting his or her private interests.

It was suggested to the Review Panel that MLAs should be prohibited from owning shares in Alberta Energy Company and any companies in a similar relationship to the Government. Ministers will usually be prohibited from owning such shares under the Review Panel's later recommendations that they be prohibited from owning publicly traded securities in companies whose interests are likely to be affected by decisions of the Government. In the Review Panel's opinion, it is sufficient for MLAs that they be required not to take part in decisions and actions affecting such companies.

Recommendation 10

The Review Panel recommend that section 31 of the *Alberta Energy Act* be repealed.

(6) MINISTERS' AND MLAS' DEALINGS WITH THE GOVERNMENT

Sections 27, 28 and 29 of the *Legislative Assembly Act* now provide that some kinds of dealings with the Government disqualify an MLA from membership in the Legislative Assembly. These include some employment by the Government, the making of contracts with the Government, and the receipt of payments from the Government.

In all these cases, a minister or MLA is likely to have a private interest which comes into conflict with his or her public duty. The *Legislative Assembly Act* provisions, including the exceptions which they make, should continue in force, but should be administered by the Ethics Commissioner under the Review Panel's later recommendations, rather than by the courts.

Recommendation 11

The Review Panel recommend:

(a) that the principles of sections 27, 28 and 29 of the *Legislative Assembly Act* dealing with Crown employment, Crown contracts and Crown payments, should be carried forward into the proposed conflicts of interests system.

(b) that the language of the Act should be changed so that the law will say that an event of the kinds mentioned in sections 27, 28 and 29 would be grounds for disqualification rather than saying that the event disqualifies the MLA.

(c) that an allegation that one of the events referred to in sections 27, 28 and 29 has occurred should go to the Ethics Commissioner and be dealt with by the investigation, hearing and reporting procedures the adoption of which we will recommend later in this report.

(d) that the successor provisions to sections 27, 28 and 29 should not allow the use of a blind trust.

(See draft legislation, sections 35.5-35.10)

(7) ECONOMIC ACTIVITIES OF MINISTERS

Ministers should not carry on outside activities which are likely to bring private interests into conflict with their ministerial responsibilities, or even to give the appearance of doing so. Outside employment, practising a profession carrying on a business, or holding directorships and other offices, may do so.

If the Ethics Commissioner is satisfied that an activity will not create a conflict of interests, a minister should be able to engage in it.

The Premiers' guidelines now prohibit ministers from holding shares in public companies the interests of which might be affected by decisions of the Government. That prohibition should be continued and should be expanded to include other kinds of securities as well as shares. To avoid confusion and unnecessary hardship, the

Ethics Commissioner should have power to decide whether or not a given security falls within the prohibited category. The Ethics Commissioner should also be able to authorize the retention of securities if immediate divestiture will cause hardship.

If a minister does not know what assets he or she owns, no conflict between private interest and public duty will arise. Therefore, where assets are of a kind which are normally traded, a minister should be entitled to put them into a blind trust so long as there are safeguards to ensure that the minister does not know what assets are in the trust.

Recommendation 12

The Review Panel recommend:

(a) that ministers should be prohibited from owning shares in or other securities issued by public companies or distributing corporations the interests of which might be affected by decisions of the Government.

(b) that the Ethics Commissioner should have power to dispense with the requirement of divestiture of securities under (a) until such time as the requirement seems fair.

(c) that the Ethics Commissioner should have power to rule on whether or not a company falls into the category described in (a).

(d) that putting the securities into a blind trust which meets the requirements of Recommendation 13 should be an alternative option to disposing of securities.

(See draft legislation, section 35.11)

Recommendation 13

The Review Panel recommend:

(a) that ministers should be prohibited from engaging in employment or the practice of a profession, carrying on a business, or holding an office or directorship other than in a social club, religious organization or political party, which is likely to conflict or appear to conflict with the responsibilities of ministerial office.

(b) that a minister should be able to obtain the approval of the Ethics Commissioner to the way in which employment, the practice of a profession, a business, or office or directorship, will be, carried on.

(See draft legislation, section 35.12)

Recommendation 14

The Review Panel recommend:

(a) that the law should permit a minister or MLA to create a blind trust for publicly traded securities and similar assets approved for inclusion in the trust by the Ethics Commissioner.

(b) that the blind trust must be under the administration of a trustee who or which is

  (i) engaged in the business of managing investments for other persons, and

  (ii) approved as trustee by the Ethics Commissioner upon being satisfied that there is no relationship between the minister or MLA and the trustee which would or would appear to affect the discharge of the trustee's duties;

(c) that the terms of the trust, in the opinion of the Ethics Commissioner,

  (i) give the trustee sole power over investment decisions, and

  (ii) preclude the minister or MLA from having any knowledge of the specific assets in the trust at any time after a deposit of assets in the trust.

(See draft legislation, sections 21.1(5),
35(a)(ii), 35.11(2)

(8) INFORMATION AND ADVICE FOR MINISTERS AND MLAS

Ministers and MLAs who understand their ethical duties are likely to perform them. It is not always, however, easy to know what one's ethical duty requires.

Therefore, it is desirable that general advice and information about ethical duties be made available to ministers and MLAs.

Further, since many specific decisions are difficult and may be second-guessed later, ministers and MLAs should be able to get advance authoritative rulings from the Ethics Commissioner and, having acted upon such rulings, should be protected against later charges of conflicts of interests.

Recommendation 15

The Review Panel recommends:

(a) that the party caucuses turn their attention to providing MLAs, including ministers, with written information and seminars about their ethical duties and the pitfalls into which they may fall.

(b) that the Ethics Commissioner promote the informational process by

  (i) personal contact with MLAs and ministers, through interviews about their disclosure statements and otherwise;

  (ii) commissioning the preparation of written information about the ethical duties of ministers and MLAs;

  (iii) continuing contact with the party caucuses and advising them as to what programmes they could usefully institute.

(See draft legislation section 35.13
as to part (b) only)

Recommendation 16

The Review Panel recommends:

(a) that a minister or MLA should be entitled to request from the Ethics Commissioner an opinion and recommendations on any matter respecting the legal and ethical duties of the minister or MLA under the conflicts of interests sytem.

(b) that the Ethics Commissioner should have power to give such an opinion and recommendations.

(c) that such an opinion and recommendations and the fact that they have been requested should be confidential unless the minister or MLA discloses them or consents to disclosure.

(d) **that if the minister or MLA has properly disclosed the material facts and acts upon the advice and directions of the Ethics Commissioner, the minister or MLA should not be subject to further proceedings under the conflicts of interests system based upon the facts disclosed.**

(See draft legislation, section 35.14)

(9) INVESTIGATION, REPORT AND SANCTION

The Legislature being entrusted with the supreme law-making power in the province, within its legislative jurisdiction, and it being important to protect the independence of MLAs, the Legislative Assembly should have the ultimate power to discipline MLAs.

However, the Assembly's procedures are not designed for the impartial and orderly investigation of allegations of conflicts of interests. Both the public and MLAs have a strong interest in having such a procedure. Therefore, the Ethics Commissioner should be able to receive allegations from the cabinet, the Legislative Assembly or the public that a minister or MLA is in breach of a duty under the conflicts of interests system, arrange for an independent investigation and an independent formal hearing, and make a report and recommendations to the Legislature. Once the formal hearing stage is reached, proceedings should be open to the public.

The Legislative Assembly should have full power to make decisions, but should be required to deal with the Ethics Commissioner's reports expeditiously.

Recommendation 17

The Review Panel recommends

(a) **that the Legislative Assembly should make final decisions and impose sanctions for breaches of duties of ministers and MLAs under the conflicts of interests system.**

(b) **that the Ethics Commissioner should be responsible for ascertaining the facts of allegations of breaches of duty and reporting them to the Assembly and giving opinions as to whether the facts disclose breaches of duty and recommendations as to what sanctions, if any, should be imposed.**

Recommendation 18

The Review Panel recommend:

(a) that the cabinet, in the case of a minister, and the Legislative Assembly in the case of an MLA, should be able to refer matters to the Ethics Commissioner for investigation and report any matter relating to the conduct of a minister or MLA under the conflicts of interests system.

(b) that anyone should be able to make an allegation to the Ethics Commissioner that a minister or MLA has committed a breach of duty under the conflicts of interests system, provided that the complainant is identified and the allegation is made in writing.

(c) that the Ethics Commissioner should not undertake an investigation on his or her own initiative, except where he has given confidential advice to a Member and has reason to believe that the Member has acted or is acting in contravention of such advice.

(See draft legislation, section 35.15)

Recommendation 19

The Review Panel recommend:

(a) that, unless an allegation of a breach of duty is clearly unfounded, the Ethics Commissioner should request the minister's or MLA's version of the circumstances.

(b) that ordinarily, the Ethics Commissioner should send the minister or MLA a copy of the allegation.

(c) that if, upon receiving the minister's or MLA's version, or in default of such version, the Ethics Commissioner thinks that there are grounds for holding a preliminary investigation, he or she should appoint an investigator who should interview witnesses, examine documents and report his or her findings and recommendations in writing to the Ethics Commissioner.

(d) that if, upon receiving the investigator's report, the Ethics Commissioner thinks that there are grounds for holding a formal hearing, the Ethics Commissioner should direct that a hearing be held and appoint a hearing officer and counsel to conduct the hearing.

(e) that the hearing officer, if the Ethics Commissioner so directs, should have the powers of a commissioner under the *Public Inquiries Act*, and that in any event the hearing officer should make a written report to the Ethics Commissioner giving his or her findings of fact and recommendations.

(f) that, upon receiving and considering the hearing officer's report, the Ethics Commissioner should report the Ethics Commissioner's findings and recommendations in writing to the Premier (if the proceeding was commenced by a reference from the cabinet) or to the Speaker of the Legislative Assembly (in any other case).

(g) that, if the Ethics Commissioner finds that a breach of duty was trivial, inadvertent, or committed in good faith, he or she may recommend that no sanction be imposed, or, alternatively, that if the minister or MLA does what can be done to rectify the breach, either no sanction or a lesser sanction be imposed.

(h) that the Speaker should refer a report of the Ethics Commissioner to the committee of the Assembly designated to deal with the Ethics Commissioner's reports, or, if no committee is designated, to the Assembly itself.

(i) that the Assembly should be at liberty to adopt the Ethics Commissioner's report with or without amendments, to reject it entirely, or to substitute a different determination and should continue to have power to impose a broad range of sanctions, not including imprisonment.

(j) that, while the power to dismiss ministers should remain with the executive branch, the Assembly should have power to impose sanctions upon an MLA who is a minister for things done in the course of a ministerial office as well as for things done in the course of the office of MLA.

(k) that the Assembly should deal with the Ethics Commissioner's report within 30 days from the delivery of the Report to the Speaker, or, if the Assembly is not in session when the report is delivered, within 30 days of the commencement of the next session of the Legislature.

(See draft legislation, sections 35.16-35.23)

Recommendation 20

The Review Panel recommends:

(a) that at every stage of the Ethics Commissioner's proceedings, the minister or MLA whose conduct is in question should be given complete information, adequate notice of proceedings, and full opportunity to meet allegations against him or her and to present his or her own case personally or by counsel.

(b) that at any stage before the commencement of a formal hearing, the Ethics Commissioner, at the request of the minister or MLA, and if satisfied that no further investigation is necessary, may dispense with a preliminary investigation or a formal hearing and make a report and recommendations to the Legislative Assembly.

(c) that the minister or MLA should be given a copy of the report and recommendations of a preliminary investigator and a hearing officer and be given an opportunity to make representations to the Ethics Commissioner before he or she takes the next step.

(d) that a formal hearing must be public unless the Ethics Commissioner or the hearing officer decides that it should be held in private.

(e) that all information given to the Ethics Commissioner must be confidential, except

  (i) as against the minister or MLA involved,

  (ii) information necessarily disclosed by a preliminary investigator in order to carry out his investigation,

  (iii) information introduced into a public hearing, and

  (iv) information used by the Ethics Commissioner in a report.

(f) the Ethics Commissioner should be under a duty to make available to the public a report made to the Premier or to the Legislative Assembly after an investigation, though it would be appropriate to give a copy to the Premier, in the case of a minister, or to the house leader of a party to which an MLA belongs, in the case of an MLA, a few days before it is made available to the public.

(g) that the Legislative Assembly's own rules should govern proceedings before the Assembly.

(See draft legislation, sections 35.17 to 35.22)

A flow chart showing the Ethics Commissioner's functions and procedures appears at page 28.

(10) REFERENCE TO THE ETHICS COMMISSIONER BY A MINISTER OR MLA

A minister or MLA who wants to bring an allegation to a head, or who realizes that he or she is in breach of a duty and wants to get it disposed of, should be able to ask the Ethics Commissioner for a ruling. Generally speaking, the Ethics Commissioner, if satisfied that the facts disclose that no breach of duty has occurred, should be able to dispose of the matter by a finding to that effect. Otherwise, it should go into the procedure for investigating allegations of conflicts of interests.

Recommendation 21

The Review Panel recommends:

(a) that a minister or MLA should be able to apply to the Ethics Commissioner for a finding as to whether or not, on the facts presented by the minister or MLA, the minister or MLA has committed a breach of duty under the proposed conflicts of interests system.

(b) that a finding by the Ethics Commissioner that, on the facts presented, the minister or MLA has committed no breach of duty should protect the minister or MLA against further proceedings based on those facts under the conflicts of interest system.

(c) that if the Ethics Commissioner thinks that it is not appropriate to dispose of the matter in that way and that there is grounds for an investigation, he or she should have power to direct that a preliminary investigation be held, and the matter should therafter follow the procedure under Recommendations 19 and 20, the Ethics Commissioner having the same powers, if requested by the minister or MLA, to proceed directly to a report to the Legislature, and to make all the recommendations which the Ethics Commissioner may make under Recommendations 19 and 20.

(11) RESTRICTIONS ON ACTIVITIES OF FORMER MINISTERS

There is a danger in fact that former ministers will have easier access to incumbent ministers and officials, and a danger that they may be able to influence current decisions. There is a greater danger that the public perception is that former ministers will have an inside track. It is also likely to appear that a former minister who accepts immediate employment with someone doing business with the Government may have been influenced by that prospect. It is therefore desirable that, for a year's cooling off period, former ministers be precluded from accepting employment with such business entities, and it is desirable that dealings by former ministers with the Government be restricted.

Recommendation 22

The Review Panel recommends:

(a) that, a former minister, for a period of one year after leaving office, be prohibited from

  (i) soliciting or accepting contracts and benefits for himself or herself or any other person, from a department or agency with which he or she had significant official dealings within the last year of service in his or her office.

  (ii) accepting employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which he or she had significant official dealings during his or her last year of service.

  (iii) acting on a commercial basis in connection with any ongoing matter in connection with which he or she had, while in office, acted for or advised a department or agency involved in the matter.

(b) that a breach of one of these prohibitions should be an offence punishable on summary conviction by a fine not exceeding $20,000.

(See draft legislation, section 35.25)

Recommendation 23

The Review Panel recommends:

(a) that a former minister should be entitled to obtain from the Ethics Commissioner a ruling as to whether or not employment which he or she proposes to accept or has accepted, or an activity in which he or she proposes to engage or has engaged, would be or is in violation of a prohibition referred to in Recommendation 22.

(b) that the Ethics Commissioner should, subject to such terms and conditions as he or she thinks fit, have power to give an exemption from, or a variation of, a prohibition under Recommendation 22 in a case in which a former minister can show hardship and in which the public interest does not require any restriction or can be protected by a lesser restriction.

(c) that a former minister who acts in accordance with a ruling, exemption or variation granted by the Ethics Commissioner should be protected from prosecution under Recommendation 22.

(See draft legislation 35.25)

Recommendation 24

The Review Panel recommend that ministers and employees of the Government be prohibited from knowingly dealing with a former minister who is acting in breach of the prohibitions contained in Recommendations 22.

(12) IMPLEMENTATION OF REVIEW PANEL'S RECOMMENDATIONS

In the Review Panel's opinion, legislation is necessary in order to make its recommendations applicable to MLAs, to establish and confer jurisdiction on the Ethics Commissioner, and to impose post-employment restrictions on former ministers. It would be convenient to have the legislation in one place, and the most appropriate place would be the *Legislative Assembly Act*.

Recommendation 25

The Review Panel recommend that the conflicts of interests system which we have recommended should be implemented by amendments to the *Legislative Assembly Act*, which might be along the general lines of the draft amendments in Part III of this Report.

B. A CONFLICTS OF INTERESTS SYSTEM FOR SENIOR PUBLIC SERVANTS

Deputy ministers and assistant deputy ministers have a strong influence on decisions of the Government and have access to much confidential Government information. Members of boards who are appointed by order in council under the *Public Service Act* occupy positions of power. The Review Panel think that the considerations of principle which require a conflicts of interests systme for ministers and MLAs apply to these officials as well.

There are, however, some different practical considerations, including some differences in public perception, differences in functions, the existence of the Ombudsman, the existence of employment contracts and the existence of a more extensive conflicts of interests system.

Recommendation 26

The Review Panel recommends that the conflicts of interests system described in Recommendation 27 apply to

(a) full-time senior public servants appointed under the *Public Service Act* by order in council, and

(b) assistant deputy ministers.

Recommendation 27

The Review Panel recommends that the conflicts of interests system applicable to the senior public servants described in Recommendation 25 should be as follows:

(a) The *Code of Conduct and Ethics for the Public Service of Alberta*

  (i) should be promulgated as a regulation under the *Public Service Act*,

  (ii) should be kept under review,

  (iii) should continue to apply to the senior public servants described in Recommendation 26 and should continue to be administered by the Public Service Commissioner.

(b) A system of disclosure of financial interests should be instituted for the senior public servants described in Recommendation 25 in substitution for that imposed by the Premiers' guidelines, as follows:

  (i) the system should be the disclosure system prescribed for ministers and MLAs under Recommendation 9 (except (g) and (h)), with necessary changes, including full confidential disclosure to the Public Service Commissioner followed by a public disclosure statement, and

  (ii) the system should be established by amendment to the *Public Service Act*.

(c) Senior public servants described in Recommendation 25 should be prohibited by the *Code of Conduct and Ethics for the Public Service of Alberta*, for a period of one year after leaving office, from soliciting or accepting contracts and benefits, on behalf of the former senior public servant or any other person, from a department or agency with which the former senior public servant had significant official dealings within the last year of service in their offices, and that employees of the Government be prohibited by the code from knowingly dealing with a former senior public servant who is acting in breach of the prohibition contained in this Recommendation.

(d) The Public Service Commissioner should

  (i) perform with respect to the disclosure system the functions which the Ethics Commissioner will perform with respect to the disclosure system proposed for ministers and MLAs, and

  (ii) have power to interpret and relax the prohibitions on the activities of former senior public servants under this Recommendation on any terms and conditions necessary to protect the public interest.

Chiefs of staff and executive assistants to ministers have access to great amounts of confidential government information. However, because of their confidential relationships to ministers and because ministers have a strong interest in ensuring that they do not act improperly, the Review Panel do not think that most of the proposed conflicts of interests system is necessary for them or should apply to them. However, so that ministers may have the necessary information, the Review Panel think that chiefs of staff and executive assistants should be required to make confidential disclosure to their ministers of their financial interests and those of their spouses and minor children.

Recommendation 28

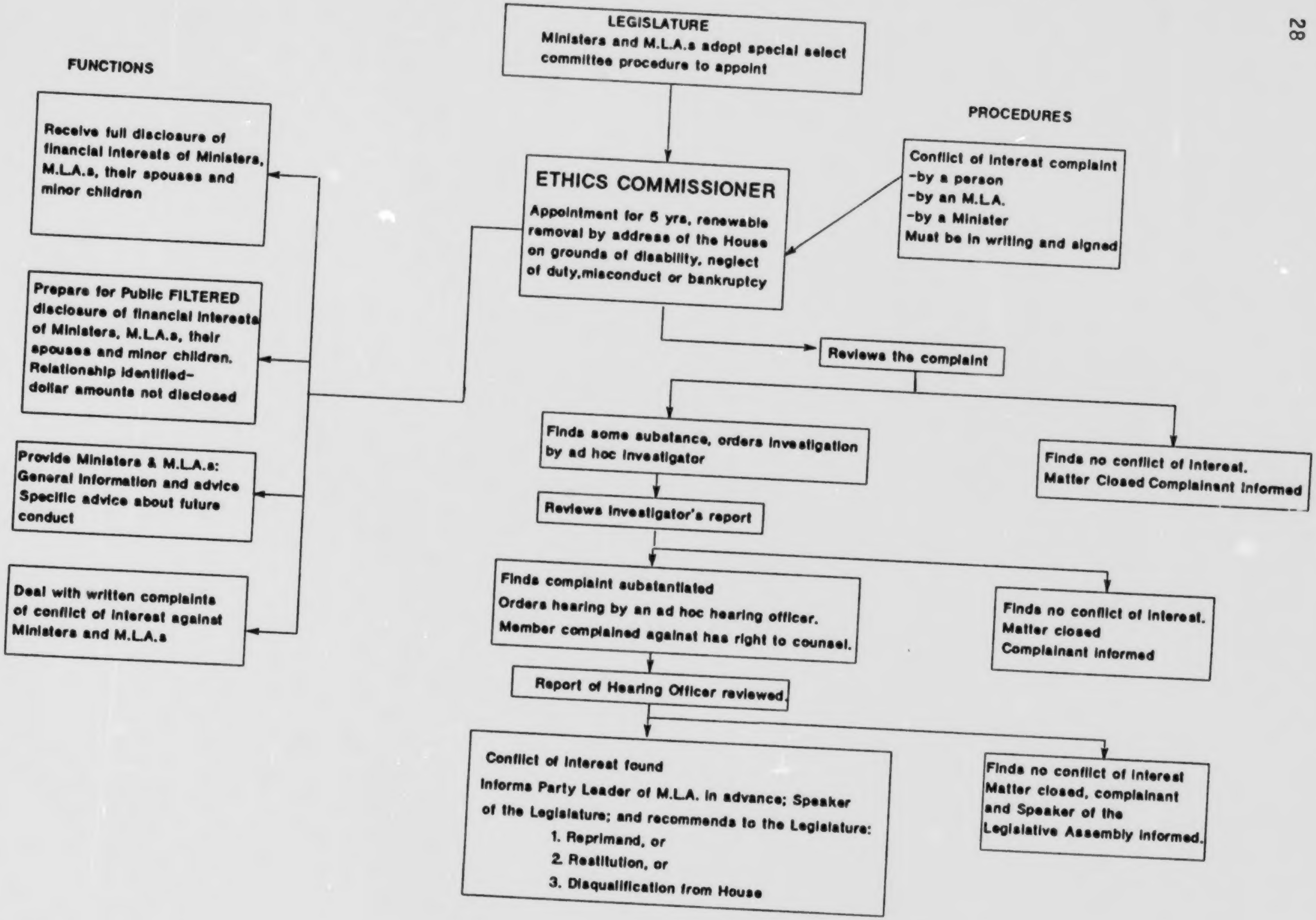
The Review Panel recommend that chief a of staff or executive assistant of a minister

(a) appointed by a minister under the order in council providing such appointments, or

(b) seconded to a minister from the public service

be required to make to the minister the same financial disclosure which ministers and MLAs are required to make to the Ethics Commissioner, such disclosure to remain confidential, and that the requirement be made, where applicable, by an amendment to the order in council, and in other cases by agreement.

ETHICS COMMISSIONER'S FUNCTIONS AND PROCEDURES


LEGISLATURE
Ministers and M.L.A.s adopt special select committee procedure to appoint
FUNCTIONS
PROCEDURES
ETHICS COMMISSIONER
Appointment for 5 yrs, renewable removal by address of the House on grounds of disability, neglect of duty,misconduct or bankruptcy
Conflict of interest complaint
-by a person
-by an M.L.A.
-by a Minister
Must be in writing and signed
Receive full disclosure of financial interests of Ministers, M.L.A.s, their spouses and minor children
Prepare for Public FILTERED disclosure of financial interests of Ministers, M.L.A.s, their spouses and minor children. Relationship identified-dollar amounts not disclosed
Provide Ministers & M.L.A.s:
General information and advice
Specific advice about future conduct
Deal with written complaints of conflict of interest against Ministers and M.L.A.s
Reviews the complaint
Finds some substance, orders investigation by ad hoc investigator
Finds no conflict of interest.
Matter Closed Complainant informed
Reviews investigator's report
Finds complaint substantiated
Orders hearing by an ad hoc hearing officer.
Member complained against has right to counsel.
Finds no conflict of interest.
Matter closed
Complainant informed
Report of Hearing Officer reviewed.
Conflict of interest found
Informs Party Leader of M.L.A. in advance; Speaker of the Legislature; and recommends to the Legislature:
1. Reprimand, or
2. Restitution, or
3. Disqualification from House
Finds no conflict of interest
Matter closed, complainant and Speaker of the Legislative Assembly informed.

CONFLICT OF INTEREST REVIEW PANEL

REPORT ON CONFLICTS OF INTERESTS RULES FOR CABINET MINISTERS, MEMBERS OF THE LEGISLATIVE ASSEMBLY AND SENIOR PUBLIC SERVANTS

February 1990

CONFLICT OF INTEREST REVIEW PANEL

PROVINCE OF ALBERTA

CHAIRMAN:
His Honour Edward Wachowich
Chief Judge, Provincial Court of Alberta

MEMBERS:
Dr. Walter Buck Mr. Frank King

5TH FLOOR LAW COURTS BUILDING 1A SIR WINSTON CHURCHILL SQUARE EDMONTON ALBERTA CANADA T5J 0R2 (403) 427•6330 FAX (403) 427•2077

5 February 1990

The Honourable Don Getty
Premier of Alberta
307 Legislature Building
EDMONTON, Alberta
T5K 2B7

Dear Mr. Premier:

Pursuant to Order in Council O.C. 425/89, as amended, we have the honour to present to you the Report of the Conflict of Interest Review Panel.

Yours sincerely,

ERWachowich
E.R. Wachowich
Chairman

Walter A Buck
Walter Buck, Member

Frank King, Member

ACKNOWLEDGEMENTS

In undertaking our mandate we have received valuable assistance from a number of individuals involved in ethics laws across Canada and the United States. Their names appear in Appendix 2 of this Report. We wish to acknowledge our gratitude to them.

The Review Panel has been very ably assisted by W.H. (Bill) Hurlburt, Q.C., Counsel to the Panel and by Vijay Bhardwaj, Research Counsel to the Panel. Bill Hurlburt's knowledge, vision of the depth and range of issues and ability to assist the Review Panel in structuring its deliberations were an asset to us and allowed an in-depth consideration of the issues within a rigorous time frame. The work of Vijay Bhardwaj also deserves special mention. Bill and Vijay ensured that research was planned in advance, completed on time and organized and presented in such a way as to enable us to make our meetings most productive. Their dedication and efficiency enabled the Panel to complete this report on time. All the members of the Review Panel join with me in expressing our sincere appreciation and thanks to these gentlemen for a job well done.

Edward R. Wachowich
Chairman

CONFLICT OF INTEREST REVIEW PANEL

Table of Contents

PART I 1

1. EXECUTIVE SUMMARY 1

   A. MINISTERS AND MLAS 1
   B. SENIOR PUBLIC SERVANTS 4

2. SUMMARY OF PROPOSALS 5

   A. A CONFLICTS OF INTERESTS SYSTEM FOR MINISTERS AND MLAS 5
      (1) OBJECTS OF A CONFLICTS OF INTERESTS SYSTEM 5
      (2) THE ETHICS COMMISSIONER 5
      (3) ETHICAL DUTIES OF MINISTERS AND MLAS 7
      (4) DISCLOSURE OF FINANCIAL INTERESTS 10
      (5) ALBERTA ENERGY COMPANY SHARES AND SECURITIES IN COMPANIES INCORPORATED OR ACQUIRED BY THE GOVERNMENT AS VEHICLES OF GOVERNMENT POLICY . . 13
      (6) MINISTERS' AND MLAS' DEALINGS WITH THE GOVERNMENT 13
      (7) ECONOMIC ACTIVITIES OF MINISTERS 14
      (8) INFORMATION AND ADVICE FOR MINISTERS AND MLAS . . 16
      (9) INVESTIGATION, REPORT AND SANCTION 18
      (10) REFERENCE TO THE ETHICS COMMISSIONER BY A MINISTER OR MLA 22
      (11) RESTRICTIONS ON ACTIVITIES OF FORMER MINISTERS . . . 22
      (12) IMPLEMENTATION OF REVIEW PANEL'S RECOMMENDATIONS 24
   B. A CONFLICTS OF INTERESTS SYSTEM FOR SENIOR PUBLIC SERVANTS 25

PART II - REPORT 29

1. INTRODUCTION 29

   A. ESTABLISHMENT AND FUNCTION OF THE REVIEW PANEL 29
   B. FORMAT OF THIS REPORT 29
   C. SCOPE OF THE REVIEW PANEL'S TERMS OF REFERENCE 30

2. MINISTERS AND MLAS 31

- A. THE REVIEW PANEL'S APPROACH 31
  - (1) ENTRUSTMENT OF POWERS 31
  - (2) REASONS FOR CONFLICTS OF INTEREST RULES 31
  - (3) OBJECTIVES OF A CONFLICTS OF INTERESTS SYSTEM 32
  - (4) CRITERIA FOR CONFLICTS OF INTERESTS RULES 34
- B. LEGISLATION AND GUIDELINES IN FORCE IN ALBERTA 35
  - (1) THE GENERAL LAW 35
  - (2) PROVINCIAL LEGISLATION AND GUIDELINES 36
- C. A PROPOSED CONFLICTS OF INTERESTS SYSTEM 37
  - (1) ADMINISTRATION OF THE SYSTEM 37
    - (a) Need for administrative intervention 37
    - (b) Where administrative intervention is needed 38
    - (c) Existing forms of administration in Alberta 39
    - (d) Administration elsewhere in Canada 40
    - (e) A single administrator, commission or board? 43
    - (f) The Ethics Commissioner 45
    - (g) Protection of Ethics Commissioner and others 47
    - (h) Results of consultation 48
    - (i) Formal Recommendations 48
  - (2) ETHICAL PRINCIPLES 49
    - (a) Need for a statement of ethical principles and rules 49
    - (b) Statement of ethical principles and rules 51
    - (c) "Recusal registries" and delegation of functions 55
    - (d) Formal Recommendations 57
  - (3) DISCLOSURE OF FINANCIAL INTERESTS 59
    - (a) Existing financial disclosure systems 59
    - (b) Objections to a public financial disclosure system 60
    - (c) Reasons for a public financial disclosure system 61
    - (d) The Review Panel's conclusions 62
    - (e) Limits on the effectiveness of a disclosure system 62
    - (f) Proposed financial disclosure system 63
      - (i) Ministers and MLAs 63
      - (ii) Scope of disclosure 64
        - (A) Disclosure of financial interests to the public 64
        - (B) Payments to MLAs and directly associated persons 66
        - (C) Disclosure to the Ethics Commissioner 66
    - (g) Spouses 68
    - (h) Children and other family members 71
    - (i) Private companies 71
    - (j) Formal Recommendations 72
  - (4) ECONOMIC ACTIVITIES OF MINISTERS AND MLAS 74
    - (a) Alberta Energy Company shares and other public policy vehicles 74

            (i) Section 31 of the *Alberta Energy Company Act* . . 74
            (ii) Ownership of shares in companies which are vehicles of provincial policy 75
        (b) Government contracts and payments 76
        (c) Special provisions applicable to ministers 77
            (i) Shares in public or distributing companies 77
            (ii) Businesses, professions and employment 79
        (d) Formal Recommendations 80
    (5) TRUSTS AS AN ALTERNATIVE TO DISCLOSURE AND DIVESTITURE 82
        (a) "Blind" trusts 82
            (i) The Review Panel's views 82
            (ii) Formal Recommendations 85
        (b) Trusts other than "blind" trusts 86
    (6) INFORMATION AND ADVICE 86
        (a) Need for information and advice 86
        (b) Providing general information and advice 87
        (c) Specific advice about future conduct 88
        (d) Comments received 91
        (e) Formal Recommendations 91
    (7) INVESTIGATION, REPORT AND SANCTION 92
        (a) Present situation 92
        (b) Sanctions for the conflicts of interests system 93
        (c) Investigation and report to the Legislative Assembly . . . 94
        (d) Detailed procedure 95
        (e) General provisions 99
        (f) Comments about the proposed procedure 100
        (g) Ethics Commissioners' reports 101
        (h) Formal Recommendations 102
    (8) REQUEST FOR ADVICE AND DIRECTIONS 105
    (9) RESTRICTIONS ON FORMER MINISTERS' ACTIVITIES 107
        (a) Reasons for restrictions 107
        (b) Nature of restrictions 108
        (c) Formal Recommendations 111
    (10) IMPLEMENTATION OF REVIEW PANEL'S RECOMMENDATIONS 112
        (a) Form of implementation 112
        (b) Formal recommendation 113

3. SENIOR PUBLIC SERVANTS 113

A. WHO ARE "SENIOR PUBLIC SERVANTS" UNDER THE EXISTING SYSTEM? 113
B. SENIOR PUBLIC SERVANTS APPOINTED UNDER THE *PUBLIC SERVICE ACT* 114
    (1) EXISTING CONFLICTS OF INTERESTS SYSTEM 114
    (2) THE REVIEW PANEL'S PROPOSALS 115

(3) WHO SHOULD BE "SENIOR PUBLIC SERVANTS" UNDER THE PROPOSED SYSTEM? 118
    (a) Order in council appointments under the *Public Service Act* 118
    (b) Assistant Deputy Ministers 119
    (c) Ministers' chiefs of staff and executive assistants 120
(4) FORMAL RECOMMENDATIONS 122
B. OTHER SENIOR PUBLIC SERVANTS 124

PART III - DRAFT LEGISLATION 125

APPENDIX 1 - TERMS OF REFERENCE 166
APPENDIX 2 - PROCEEDINGS OF THE REVIEW PANEL 167
APPENDIX 3 - ALBERTA LEGISLATION AND GUIDELINES 171
APPENDIX 4 - CONFLICTS OF INTERESTS RULES IN CANADA 207
APPENDIX 5 - THE UNITED KINGDOM AND THE UNITED STATES 250

CONFLICT OF INTEREST REVIEW PANEL

REPORT

PART I

1. EXECUTIVE SUMMARY

A. MINISTERS AND MLAS

In this report, the Conflict of Interest Review Panel

- concludes
  - that ministers and MLAs take a responsible and ethical approach to the exercise of their powers, but
  - that the present system of dealing with the possible conflicts of interests should be extended because of
    - the increasing complexity of public affairs
    - the increasing need to maintain public confidence in the integrity of the institutions of government
- recommends that section 31 of the *Alberta Energy Company Act*, which permits MLAs who own Alberta Energy Company shares to vote on matters affecting the company, be repealed

The Review Panel proposes that an Ethics Commissioner selected by the Legislative Assembly be appointed to administer the system. The Ethics Commissioner will

- supervise the proposed system for disclosure of financial interests of ministers and MLAs and their families

- give authoritative advice to ministers and MLAs about their ethical duties
- provide the Legislative Assembly, after investigation, with reports and recommendations about allegations of breaches of ethical duties by ministers and MLAs
- have many powers to make adjustments so that complying with the conflicts of interests system will not cause unnecessary hardship in individual cases.

Other components of the conflicts of interests system would be

- the laying down by statute of ethical duties which recognize that public office is entrusted to ministers and MLAs for the benefit of the public
  - and include duties
    - to carry out their offices so as to maintain public confidence and trust
    - not to exercise powers which might advance the privates interests of themselves or their families
    - not to use inside information or influence for private benefit
    - not to accept gifts and benefits related to their offices
- a system of disclosure of financial interests involving
  - complete confidential disclosure to the Ethics Commissioner of the financial interests of themselves, their spouses and minor children

    - public disclosure by the Ethics Commissioner of information sufficient to allow the public to satisfy itself that ministers and MLAs are carrying out their ethical duties, which will usually identify all financial interests but not give amounts or values

- the use of properly safeguarded blind trusts for publicly traded securities and similar investments only

- a system for dealing with allegations of breaches of ethical duties under which

    - the facts will be investigated by or under the supervision of the Ethics Commissioner and reported to the Legislative Assembly

    - final decisions will be made by the Legislative Assembly

The Review Panel proposes that the following special provisions apply to ministers:

- restrictions on ministers

    - holding shares in public companies

    - engaging in employment or businesses likely to cause conflicts with their duties,

- prohibiting former ministers, for a year, unless exempted by the Ethics Commissioner, from

    - soliciting or accepting, on anyone's behalf, contracts or benefits from any department or agency with which the former minister had significant official contact during the last year of office

- accepting employment with an employer with whom the former minister had significant official dealings during the last year in office

- advising or acting in connection with any matter on which the former minister had acted or advised while in office

The Review Panel propose that these provisions be incorporated in revisions of the *Legislative Assembly Act*, a draft of which is included in the report.

B. SENIOR PUBLIC SERVANTS

The Review Panel proposes, in connection with deputy ministers and board officials appointed under the *Public Service Act* by order in council, and also in connection with assistant deputy ministers

- that the existing *Code of Conduct and Ethics for the Public Service of Alberta* be continued and updated as required

- that a financial disclosure system similar to that proposed for ministers and MLAs apply to them but be administered by the Public Service Commissioner

- that for one year lobbying of a department or agency with which the senior public servant had significant official dealings within the last year of service be prohibited unless the Public Service Commissioner makes an exemption.

The Review Panel proposes that ministers' executive assistants and chiefs of staff should be required to make complete confidential disclosure of their financial interests to their ministers but that they should not otherwise be brought under the proposed conflicts of interests system.

The report gives extensive reasons for the Review Panel's proposals. It includes in appendices the relevant Alberta legislation and guidelines and reviews of some of the more important materials considered by the Review Panel.

2. SUMMARY OF PROPOSALS

A. A CONFLICTS OF INTERESTS SYSTEM FOR MINISTERS AND MLAS

(1) OBJECTS OF A CONFLICTS OF INTERESTS SYSTEM

Public affairs have become more complex. The public has become less willing to accept official assurances of the integrity of government institutions. These circumstances make it imperative that Alberta adopt a more extensive conflicts of interests system for elected representatives.

Recommendation 1

The Review Panel recommend that a more comprehensive conflicts of interests system be established for ministers and MLAs in accordance with the Review Panel's later recommendations.

Recommendation 2

The Review Panel recommend that the Alberta conflicts of interests system for Alberta ministers and MLAs

(a) should recognize that ministers and MLAs take a responsible and ethical approach to the duties of their offices in accordance with established parliamentary traditions;

(b) should give assurance to the public that they do so;

(c) should be designed to minimize the number of conflicts of interests between private interests and public duties and to ensure that when conflicts do arise, ministers and MLAs will not exercise their official powers;

(d) should treat ministers and MLAs fairly and provide assistance for them in discharging their ethical duties.

(2) THE ETHICS COMMISSIONER

A conflicts of interests system which consists of rules alone will either be so loose as to be ineffective or so rigid as to be unsuitable for particular cases. Something more is needed if the system is to protect the public interest, maintain public confidence, and be fair to ministers and MLAs.

The Review Panel therefore recommend that an Ethics Commissioner be appointed to administer the conflicts of interests system which we propose for ministers and MLAs. The Ethics Commissioner will make the conflicts of interests system more fair and workable, help ministers and MLAs to perform their duties, and remove the investigation of conflict of interest allegations from the political forum while leaving the ultimate responsibility with the Legislative Assembly.

As the functions of the Ethics Commissioner will affect MLAs, the Legislative Assembly should select him and have the power of dismissal. The selection and dismissal should be formally effected by order in council.

Recommendation 3

The Review Panel recommend:

(a) that an Ethics Commissioner be appointed to administer the more comprehensive conflicts of interests system which we recommend later in this report;

(b) that the Ethics Commissioner should have the functions, powers and duties set out in our later recommendations;

(c) that the Ethics Commissioner should be chosen by the Legislative Assembly and appointed by order in council;

(d) that the Ethics Commissioner

  (i) should not be a minister or MLA,

  (ii) should not have interests which would conflict with his or her duty as Ethics Commissioner, and

  (iii) could be appointed on a full time or part time basis, depending on the volume of work.

(e) that the Ethics Commissioner should be appointed for a term of 5 years, with eligibility for reappointment, and be subject to dismissal by order in council at the request of the Legislative Assembly for disability, neglect of duty, misconduct or bankruptcy.

(f) that the Ethics Commissioner, the Ethics Commissioner's staff, investigators and hearing officers, and persons who make allegations to and provide information and evidence for the Ethics

Commissioner, should be given appropriate protection from legal liability.

(Draft legislation, sections 25-31 and 35.23)

(3) ETHICAL DUTIES OF MINISTERS AND MLAS

Ministers and MLAs should be told in understandable terms what ethical standards they are required to meet and what their ethical duties are. This is only fair, and it will encourage adherence to the standards and duties.

Proclaiming the ethical duties of ministers and MLAs, and taking measures to show that ministers and MLAs carry out those duties will show the public that ethical conduct is required from their elected representatives and give them standards by which to assess that conduct.

The standards should be designed to ensure that ministers and MLAs use their powers for the benefit of the public and not of private individuals.

The financial and personal relationships of married couples and their dependent children are so close that the duty of a minister or MLA not to advance his or her own interests should extend to the interests of a spouse, unless their financial affairs have been separated by a separation agreement or court order, and to the interests of a minor child. The duty should also extend to a person with whom a minister or MLA is living in a conjugal relationship outside marriage.

Recommendation 4

The Review Panel recommend that the law state that the office and powers of a minister or MLA are entrusted to the minister or MLA to advance the public interest and are subject to the duties set out in the Review Panel's later recommendations.

(See draft legislation, section 31)

Recommendation 5

The Review Panel recommend that the law state that ministers and MLAs are under the following general ethical duties:

(a) a duty to exercise their offices and powers for what, in their perception, is for the benefit of the public.

(b) a duty not to exercise their offices or powers for private benefit.

(c) a duty to exercise their offices and powers in such a way as to maintain public confidence in the institutions of government.

(See draft legislation, section 32)

There are some more specific rules which the law should set out so that ministers and MLAs who follow them may avoid conflicts of interests situations.

Recommendation 6

The Review Panel recommend that the law state that ministers and MLAs are under the following specific duties:

(a) a duty to perform the minister's or MLA's duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in his or her integrity, objectivity and impartiality.

(b) a duty not to take part in any decision, action, or course of official conduct, which might affect the private interests of the minister or MLA or those of a spouse or minor child.

Where a matter requiring such a decision comes before the Legislative Assembly or the cabinet, as the case may be, the minister or MLA is under a duty to declare his or her interest and withdraw from the meeting without voting or participating in the consideration of the matter.

Where such a matter requires a decision from a minister, the minister should request another minister to deal with the matter.

These duties do not apply when the private interest of the minister or MLA is shared with the public generally or a broad class of the public.

(c) A duty not to use the minister's or MLA's position or powers of office to influence the Government or a department or agency for the benefit of the minister or a spouse or child, or, except in the performance of public duties (including normal constituency activities), for the benefit of any other person.

(d) a duty not to use or communicate for the benefit of the minister or MLA or a spouse or child, or, except in the performance of public duties, for the benefit of any other person, information acquired by the minister or MLA in the course of his office and not available to the public.

(e) a duty not to accept a fee, gift or other benefit that is connected directly or indirectly with the performance of duties of office, except

  (i) a salary and other payments prescribed by law, and

  (ii) a gift or personal benefit that is received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office, if the value is $200 or less. If the value exceeds $200, the minister or MLA should be able to keep the gift or benefit if the Ethics Commissioner approves, but the gift or benefit should be included in the public financial disclosure statement provided for in recommendations made later in this report

(See draft legislation, section 33)

Recommendation 7

The Review Panel recommend that the duties of a minister or MLA in relation to his or her spouse under Recommendation 6

(a) do not extend to a spouse with whom a minister or MLA has entered into a separation agreement or whose mutual support obligations and property rights have been dealt with by a court.

(b) do extend to a person with whom the minister or MLA is living in a conjugal relationship outside marriage.

(See draft legislation, section 21(e))

Recommendation 8

The Review Panel recommend that the same duty not to accept fees, gifts or benefits connected directly with the exercise of the office of a minister or MLA should extend to the minister's or MLA's spouse, with the inclusion and exclusion set out in Recommendation 7, and minor children.

(4) DISCLOSURE OF FINANCIAL INTERESTS

Public disclosure of the financial interests of ministers and MLAs enables the public to determine whether or not their official actions have advanced, or might have advanced, their own private interests. The present Alberta disclosure systems should be expanded.

However, the privacy of ministers and MLAs should be respected except where it is overridden by the public's need to know. Ministers and MLAs should make complete disclosure of their assets, liabilities, sources of income and permitted gifts and benefits to the Ethics Commissioner. The Ethics Commissioner should then make public the information which the public needs to know, which will usually include the existence of financial interests but not their values or amounts and will usually exclude items of small amount or value.

Because of the close relationship between many married couples, advancing a financial interest of one spouse often benefits both. Disclosure should therefore include disclosure of the financial interests of the spouses of ministers and MLAs. It should also include disclosure of the interests of the minor children of ministers and MLAs, who are likely to be dependent upon their parents.

Recommendation 9

The Review Panel recommend:

(a) that ministers and MLAs should be required to make public disclosure of the financial interests of themselves, their spouses and minor children, and of private or non-distributing companies in which they, their spouses and minor children, hold interests;

(b) that the same requirements should apply to both ministers and MLAs;

(c) that the public disclosure should include

(i) disclosure of all assets, liabilities and sources of income, but not, unless the Ethics Commissioner decides that the public interest requires it, disclosure of values or amounts of assets, liabilities and sources of income, and

(ii) disclosure of gifts or personal benefits by a minister or MLA or by his spouse or minor children received as an incident of protocol or of the social obligations that normally accompany the responsibilities of the office of the minister or MLA, which exceed $200 from one source in any twelve month period and are retained with the approval of the Ethics Commissioner.

(d) that the following should not have to be included in the public disclosure:

(i) assets, liabilities and interests having individual values of $1000 or less,

(ii) sources of income of less than $1000 per year,

(iii) information identifying a home or recreational property occupied by the minister or MLA or his or her family,

(iv) things used personally by a minister, MLA, or his or their family,

(v) amounts or values of assets, liabilities and interests, unless the Ethics Commissioner, for special reason, thinks an amount or value should be included,

(vi) publicly traded securities and similar assets which are in a blind trust which meets the requirements of Recommendation 14,

(vii) unpaid taxes and support obligations;

(e) that ministers and MLAs should make to the Ethics Commissioner, upon election or appointment and annually and upon material changes thereafter, full disclosure of all assets, liabilities and sources of income, including those exempted from public disclosure but excepting things used personally by them and their families;

(f) that the Ethics Commissioner should be required to prepare and file with the Clerk of the Legislative Assembly, after consultation with the minister or MLA, and his or her spouse, if available, a public disclosure statement for each minister and MLA which will provide the information required under (c) above;

(g) that each minister and MLA should be required to disclose as a separate item the names of his or her spouse and minor children, corporations of which the minister or MLA is a director or senior officer, corporations in which the minister or MLA holds shares (other than co-operatives and credit unions, and not if the shares are publicly-traded shares), partnerships of less than 20 partners in which the minister or MLA or a corporation referred to above is a partner, and persons or groups of persons who are agents of the minister or MLA;

(h) that the Provincial Treasurer should after the end of each year publish a statement of money paid by the Government to each minister and MLA and the persons directly associated with the minister or MLA under clause (g), as is done now under the *Legislative Assembly Act*;

(i) that each minister and MLA should be required to disclose to the Ethics Commissioner, to the extent that he or she knows it, the same information about his or her spouse's financial interests as the minister or MLA is required to disclose about his or her own financial interests;

(j) that the Ethics Commissioner should include in the minister's or MLA's public disclosure statement the same information about the minister's or MLA's spouse as the minister's or MLA's public disclosure statement will include abut the minister or MLA, though the Ethics Commissioner should have a discretion to exclude spousal information which will cause special hardship to a spouse unless disclosure is clearly required by the public interest;

(k) that where a minister or MLA has entered into a separation agreement with his or her spouse, or if their matrimonial property and support obligations have been dealt with by a court, the disclosure obligations relating to the spouse's financial interests should not apply;

(l) that the recommendations made with respect to a spouse should apply to a person with whom a minister or MLA is living with in a conjugal relationship outside marriage.

(m) that the Ethics Commissioner should report periodically to the Legislature the names of ministers and MLAs who have made proper disclosure and the names of those who have not.

(See draft legislation, sections 34-35.4)

(5) ALBERTA ENERGY COMPANY SHARES AND SECURITIES IN COMPANIES INCORPORATED OR ACQUIRED BY THE GOVERNMENT AS VEHICLES OF GOVERNMENT POLICY

Section 31 of the *Alberta Energy Company Act* provides that the right of an MLA to participate in and vote on any matter relating to the Alberta Energy Company Ltd. is not affected by the MLA's ownership of shares in the company.

In the Review Panel's opinion, there is no reason, now or for the future, to except ministers and MLAs who own shares in the Alberta Energy Company Ltd. from the general rule that a minister or MLA should not take part in decisions and actions affecting his or her private interests.

It was suggested to the Review Panel that MLAs should be prohibited from owning shares in Alberta Energy Company and any companies in a similar relationship to the Government. Ministers will usually be prohibited from owning such shares under the Review Panel's later recommendations that they be prohibited from owning publicly traded securities in companies whose interests are likely to be affected by decisions of the Government. In the Review Panel's opinion, it is sufficient for MLAs that they be required not to take part in decisions and actions affecting such companies.

Recommendation 10

The Review Panel recommend that section 31 of the *Alberta Energy Act* be repealed.

(6) MINISTERS' AND MLAS' DEALINGS WITH THE GOVERNMENT

Sections 27, 28 and 29 of the *Legislative Assembly Act* now provide that some kinds of dealings with the Government disqualify an MLA from membership in the Legislative Assembly. These include some employment by the Government, the making of contracts with the Government, and the receipt of payments from the Government.

In all these cases, a minister or MLA is likely to have a private interest which comes into conflict with his or her public duty. The *Legislative Assembly Act* provisions, including the exceptions which they make, should continue in force, but should be administered by the Ethics Commissioner under the Review Panel's later recommendations, rather than by the courts.

Recommendation 11

The Review Panel recommend:

(a) that the principles of sections 27, 28 and 29 of the *Legislative Assembly Act* dealing with Crown employment, Crown contracts and Crown payments, should be carried forward into the proposed conflicts of interests system.

(b) that the language of the Act should be changed so that the law will say that an event of the kinds mentioned in sections 27, 28 and 29 would be grounds for disqualification rather than saying that the event disqualifies the MLA.

(c) that an allegation that one of the events referred to in sections 27, 28 and 29 has occurred should go to the Ethics Commissioner and be dealt with by the investigation, hearing and reporting procedures the adoption of which we will recommend later in this report.

(d) that the successor provisions to sections 27, 28 and 29 should not allow the use of a blind trust.

(See draft legislation, sections 35.5-35.10)

(7) ECONOMIC ACTIVITIES OF MINISTERS

Ministers should not carry on outside activities which are likely to bring private interests into conflict with their ministerial responsibilities, or even to give the appearance of doing so. Outside employment, practising a profession carrying on a business, or holding directorships and other offices, may do so.

If the Ethics Commissioner is satisfied that an activity will not create a conflict of interests, a minister should be able to engage in it.

The Premiers' guidelines now prohibit ministers from holding shares in public companies the interests of which might be affected by decisions of the Government. That prohibition should be continued and should be expanded to include other kinds of securities as well as shares. To avoid confusion and unnecessary hardship, the

Ethics Commissioner should have power to decide whether or not a given security falls within the prohibited category. The Ethics Commissioner should also be able to authorize the retention of securities if immediate divestiture will cause hardship.

If a minister does not know what assets he or she owns, no conflict between private interest and public duty will arise. Therefore, where assets are of a kind which are normally traded, a minister should be entitled to put them into a blind trust so long as there are safeguards to ensure that the minister does not know what assets are in the trust.

Recommendation 12

The Review Panel recommend:

(a) that ministers should be prohibited from owning shares in or other securities issued by public companies or distributing corporations the interests of which might be affected by decisions of the Government.

(b) that the Ethics Commissioner should have power to dispense with the requirement of divestiture of securities under (a) until such time as the requirement seems fair.

(c) that the Ethics Commissioner should have power to rule on whether or not a company falls into the category described in (a).

(d) that putting the securities into a blind trust which meets the requirements of Recommendation 13 should be an alternative option to disposing of securities.

(See draft legislation, section 35.11)

Recommendation 13

The Review Panel recommend:

(a) that ministers should be prohibited from engaging in employment or the practice of a profession, carrying on a business, or holding an office or directorship other than in a social club, religious organization or political party, which is likely to conflict or appear to conflict with the responsibilities of ministerial office.

(b) that a minister should be able to obtain the approval of the Ethics Commissioner to the way in which employment, the practice of a profession, a business, or office or directorship, will be, carried on.

(See draft legislation, section 35.12)

Recommendation 14

The Review Panel recommend:

(a) that the law should permit a minister or MLA to create a blind trust for publicly traded securities and similar assets approved for inclusion in the trust by the Ethics Commissioner.

(b) that the blind trust must be under the administration of a trustee who or which is

  (i) engaged in the business of managing investments for other persons, and

  (ii) approved as trustee by the Ethics Commissioner upon being satisfied that there is no relationship between the minister or MLA and the trustee which would or would appear to affect the discharge of the trustee's duties;

(c) that the terms of the trust, in the opinion of the Ethics Commissioner,

  (i) give the trustee sole power over investment decisions, and

  (ii) preclude the minister or MLA from having any knowledge of the specific assets in the trust at any time after a deposit of assets in the trust.

(See draft legislation, sections 21.1(5), 35(a)(ii), 35.11(2)

(8) INFORMATION AND ADVICE FOR MINISTERS AND MLAS

Ministers and MLAs who understand their ethical duties are likely to perform them. It is not always, however, easy to know what one's ethical duty requires.

Therefore, it is desirable that general advice and information about ethical duties be made available to ministers and MLAs.

Further, since many specific decisions are difficult and may be second-guessed later, ministers and MLAs should be able to get advance authoritative rulings from the Ethics Commissioner and, having acted upon such rulings, should be protected against later charges of conflicts of interests.

Recommendation 15

The Review Panel recommends:

(a) that the party caucuses turn their attention to providing MLAs, including ministers, with written information and seminars about their ethical duties and the pitfalls into which they may fall.

(b) that the Ethics Commissioner promote the informational process by

  (i) personal contact with MLAs and ministers, through interviews about their disclosure statements and otherwise;

  (ii) commissioning the preparation of written information about the ethical duties of ministers and MLAs;

  (iii) continuing contact with the party caucuses and advising them as to what programmes they could usefully institute.

(See draft legislation section 35.13
as to part (b) only)

Recommendation 16

The Review Panel recommends:

(a) that a minister or MLA should be entitled to request from the Ethics Commissioner an opinion and recommendations on any matter respecting the legal and ethical duties of the minister or MLA under the conflicts of interests sytem.

(b) that the Ethics Commissioner should have power to give such an opinion and recommendations.

(c) that such an opinion and recommendations and the fact that they have been requested should be confidential unless the minister or MLA discloses them or consents to disclosure.

(d) that if the minister or MLA has properly disclosed the material facts and acts upon the advice and directions of the Ethics Commissioner, the minister or MLA should not be subject to further proceedings under the conflicts of interests system based upon the facts disclosed.

(See draft legislation, section 35.14)

(9) INVESTIGATION, REPORT AND SANCTION

The Legislature being entrusted with the supreme law-making power in the province, within its legislative jurisdiction, and it being important to protect the independence of MLAs, the Legislative Assembly should have the ultimate power to discipline MLAs.

However, the Assembly's procedures are not designed for the impartial and orderly investigation of allegations of conflicts of interests. Both the public and MLAs have a strong interest in having such a procedure. Therefore, the Ethics Commissioner should be able to receive allegations from the cabinet, the Legislative Assembly or the public that a minister or MLA is in breach of a duty under the conflicts of interests system, arrange for an independent investigation and an independent formal hearing, and make a report and recommendations to the Legislature. Once the formal hearing stage is reached, proceedings should be open to the public.

The Legislative Assembly should have full power to make decisions, but should be required to deal with the Ethics Commissioner's reports expeditiously.

Recommendation 17

The Review Panel recommends

(a) that the Legislative Assembly should make final decisions and impose sanctions for breaches of duties of ministers and MLAs under the conflicts of interests system.

(b) that the Ethics Commissioner should be responsible for ascertaining the facts of allegations of breaches of duty and reporting them to the Assembly and giving opinions as to whether the facts disclose breaches of duty and recommendations as to what sanctions, if any, should be imposed.

Recommendation 18

The Review Panel recommend:

(a) that the cabinet, in the case of a minister, and the Legislative Assembly in the case of an MLA, should be able to refer matters to the Ethics Commissioner for investigation and report any matter relating to the conduct of a minister or MLA under the conflicts of interests system.

(b) that anyone should be able to make an allegation to the Ethics Commissioner that a minister or MLA has committed a breach of duty under the conflicts of interests system, provided that the complainant is identified and the allegation is made in writing.

(c) that the Ethics Commissioner should not undertake an investigation on his or her own initiative, except where he has given confidential advice to a Member and has reason to believe that the Member has acted or is acting in contravention of such advice.

(See draft legislation, section 35.15)

Recommendation 19

The Review Panel recommend:

(a) that, unless an allegation of a breach of duty is clearly unfounded, the Ethics Commissioner should request the minister's or MLA's version of the circumstances.

(b) that ordinarily, the Ethics Commissioner should send the minister or MLA a copy of the allegation.

(c) that if, upon receiving the minister's or MLA's version, or in default of such version, the Ethics Commissioner thinks that there are grounds for holding a preliminary investigation, he or she should appoint an investigator who should interview witnesses, examine documents and report his or her findings and recommendations in writing to the Ethics Commissioner.

(d) that if, upon receiving the investigator's report, the Ethics Commissioner thinks that there are grounds for holding a formal hearing, the Ethics Commissioner should direct that a hearing be held and appoint a hearing officer and counsel to conduct the hearing.

(e) that the hearing officer, if the Ethics Commissioner so directs, should have the powers of a commissioner under the *Public Inquiries Act*, and that in any event the hearing officer should make a written report to the Ethics Commissioner giving his or her findings of fact and recommendations.

(f) that, upon receiving and considering the hearing officer's report, the Ethics Commissioner should report the Ethics Commissioner's findings and recommendations in writing to the Premier (if the proceeding was commenced by a reference from the cabinet) or to the Speaker of the Legislative Assembly (in any other case).

(g) that, if the Ethics Commissioner finds that a breach of duty was trivial, inadvertent, or committed in good faith, he or she may recommend that no sanction be imposed, or, alternatively, that if the minister or MLA does what can be done to rectify the breach, either no sanction or a lesser sanction be imposed.

(h) that the Speaker should refer a report of the Ethics Commissioner to the committee of the Assembly designated to deal with the Ethics Commissioner's reports, or, if no committee is designated, to the Assembly itself.

(i) that the Assembly should be at liberty to adopt the Ethics Commissioner's report with or without amendments, to reject it entirely, or to substitute a different determination and should continue to have power to impose a broad range of sanctions, not including imprisonment.

(j) that, while the power to dismiss ministers should remain with the executive branch, the Assembly should have power to impose sanctions upon an MLA who is a minister for things done in the course of a ministerial office as well as for things done in the course of the office of MLA.

(k) that the Assembly should deal with the Ethics Commissioner's report within 30 days from the delivery of the Report to the Speaker, or, if the Assembly is not in session when the report is delivered, within 30 days of the commencement of the next session of the Legislature.

(See draft legislation, sections 35.16-35.23)

Recommendation 20

The Review Panel recommends:

(a) that at every stage of the Ethics Commissioner's proceedings, the minister or MLA whose conduct is in question should be given complete information, adequate notice of proceedings, and full opportunity to meet allegations against him or her and to present his or her own case personally or by counsel.

(b) that at any stage before the commencement of a formal hearing, the Ethics Commissioner, at the request of the minister or MLA, and if satisfied that no further investigation is necessary, may dispense with a preliminary investigation or a formal hearing and make a report and recommendations to the Legislative Assembly.

(c) that the minister or MLA should be given a copy of the report and recommendations of a preliminary investigator and a hearing officer and be given an opportunity to make representations to the Ethics Commissioner before he or she takes the next step.

(d) that a formal hearing must be public unless the Ethics Commissioner or the hearing officer decides that it should be held in private.

(e) that all information given to the Ethics Commissioner must be confidential, except

    (i) as against the minister or MLA involved,

    (ii) information necessarily disclosed by a preliminary investigator in order to carry out his investigation,

    (iii) information introduced into a public hearing, and

    (iv) information used by the Ethics Commissioner in a report.

(f) the Ethics Commissioner should be under a duty to make available to the public a report made to the Premier or to the Legislative Assembly after an investigation, though it would be appropriate to give a copy to the Premier, in the case of a minister, or to the house leader of a party to which an MLA belongs, in the case of an MLA, a few days before it is made available to the public.

(g) that the Legislative Assembly's own rules should govern proceedings before the Assembly.

(See draft legislation, sections 35.17 to 35.22)

A flow chart showing the Ethics Commissioner's functions and procedures appears at page 28.

(10) REFERENCE TO THE ETHICS COMMISSIONER BY A MINISTER OR MLA

A minister or MLA who wants to bring an allegation to a head, or who realizes that he or she is in breach of a duty and wants to get it disposed of, should be able to ask the Ethics Commissioner for a ruling. Generally speaking, the Ethics Commissioner, if satisfied that the facts disclose that no breach of duty has occurred, should be able to dispose of the matter by a finding to that effect. Otherwise, it should go into the procedure for investigating allegations of conflicts of interests.

Recommendation 21

The Review Panel recommends:

(a) that a minister or MLA should be able to apply to the Ethics Commissioner for a finding as to whether or not, on the facts presented by the minister or MLA, the minister or MLA has committed a breach of duty under the proposed conflicts of interests system.

(b) that a finding by the Ethics Commissioner that, on the facts presented, the minister or MLA has committed no breach of duty should protect the minister or MLA against further proceedings based on those facts under the conflicts of interest system.

(c) that if the Ethics Commissioner thinks that it is not appropriate to dispose of the matter in that way and that there is grounds for an investigation, he or she should have power to direct that a preliminary investigation be held, and the matter should therafter follow the procedure under Recommendations 19 and 20, the Ethics Commissioner having the same powers, if requested by the minister or MLA, to proceed directly to a report to the Legislature, and to make all the recommendations which the Ethics Commissioner may make under Recommendations 19 and 20.

(11) RESTRICTIONS ON ACTIVITIES OF FORMER MINISTERS

There is a danger in fact that former ministers will have easier access to incumbent ministers and officials, and a danger that they may be able to influence current decisions. There is a greater danger that the public perception is that former ministers will have an inside track. It is also likely to appear that a former minister who accepts immediate employment with someone doing business with the Government may have been influenced by that prospect. It is therefore desirable that, for a year's cooling off period, former ministers be precluded from accepting employment with such business entities, and it is desirable that dealings by former ministers with the Government be restricted.

Recommendation 22

The Review Panel recommends:

(a) that, a former minister, for a period of one year after leaving office, be prohibited from

  (i) soliciting or accepting contracts and benefits for himself or herself or any other person, from a department or agency with which he or she had significant official dealings within the last year of service in his or her office.

  (ii) accepting employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which he or she had significant official dealings during his or her last year of service.

  (iii) acting on a commercial basis in connection with any ongoing matter in connection with which he or she had, while in office, acted for or advised a department or agency involved in the matter.

(b) that a breach of one of these prohibitions should be an offence punishable on summary conviction by a fine not exceeding $20,000.

(See draft legislation, section 35.25)

Recommendation 23

The Review Panel recommends:

(a) that a former minister should be entitled to obtain from the Ethics Commissioner a ruling as to whether or not employment which he or she proposes to accept or has accepted, or an activity in which he or she proposes to engage or has engaged, would be or is in violation of a prohibition referred to in Recommendation 22.

(b) that the Ethics Commissioner should, subject to such terms and conditions as he or she thinks fit, have power to give an exemption from, or a variation of, a prohibition under Recommendation 22 in a case in which a former minister can show hardship and in which the public interest does not require any restriction or can be protected by a lesser restriction.

(c) that a former minister who acts in accordance with a ruling, exemption or variation granted by the Ethics Commissioner should be protected from prosecution under Recommendation 22.

(See draft legislation 35.25)

Recommendation 24

The Review Panel recommend that ministers and employees of the Government be prohibited from knowingly dealing with a former minister who is acting in breach of the prohibitions contained in Recommendations 22.

(12) IMPLEMENTATION OF REVIEW PANEL'S RECOMMENDATIONS

In the Review Panel's opinion, legislation is necessary in order to make its recommendations applicable to MLAs, to establish and confer jurisdiction on the Ethics Commissioner, and to impose post-employment restrictions on former ministers. It would be convenient to have the legislation in one place, and the most appropriate place would be the *Legislative Assembly Act*.

Recommendation 25

The Review Panel recommend that the conflicts of interests system which we have recommended should be implemented by amendments to the *Legislative Assembly Act*, which might be along the general lines of the draft amendments in Part III of this Report.

B. A CONFLICTS OF INTERESTS SYSTEM FOR SENIOR PUBLIC SERVANTS

Deputy ministers and assistant deputy ministers have a strong influence on decisions of the Government and have access to much confidential Government information. Members of boards who are appointed by order in council under the *Public Service Act* occupy positions of power. The Review Panel think that the considerations of principle which require a conflicts of interests systme for ministers and MLAs apply to these officials as well.

There are, however, some different practical considerations, including some differences in public perception, differences in functions, the existence of the Ombudsman, the existence of employment contracts and the existence of a more extensive conflicts of interests system.

Recommendation 26

The Review Panel recommends that the conflicts of interests system described in Recommendation 27 apply to

(a) full-time senior public servants appointed under the *Public Service Act* by order in council, and

(b) assistant deputy ministers.

Recommendation 27

The Review Panel recommends that the conflicts of interests system applicable to the senior public servants described in Recommendation 25 should be as follows:

(a) The *Code of Conduct and Ethics for the Public Service of Alberta*

  (i) should be promulgated as a regulation under the *Public Service Act*,

  (ii) should be kept under review,

  (iii) should continue to apply to the senior public servants described in Recommendation 26 and should continue to be administered by the Public Service Commissioner.

(b) A system of disclosure of financial interests should be instituted for the senior public servants described in Recommendation 25 in substitution for that imposed by the Premiers' guidelines, as follows:

  (i) the system should be the disclosure system prescribed for ministers and MLAs under Recommendation 9 (except (g) and (h)), with necessary changes, including full confidential disclosure to the Public Service Commissioner followed by a public disclosure statement, and

  (ii) the system should be established by amendment to the *Public Service Act*.

(c) Senior public servants described in Recommendation 25 should be prohibited by the *Code of Conduct and Ethics for the Public Service of Alberta*, for a period of one year after leaving office, from soliciting or accepting contracts and benefits, on behalf of the former senior public servant or any other person, from a department or agency with which the former senior public servant had significant official dealings within the last year of service in their offices, and that employees of the Government be prohibited by the code from knowingly dealing with a former senior public servant who is acting in breach of the prohibition contained in this Recommendation.

(d) The Public Service Commissioner should

  (i) perform with respect to the disclosure system the functions which the Ethics Commissioner will perform with respect to the disclosure system proposed for ministers and MLAs, and

  (ii) have power to interpret and relax the prohibitions on the activities of former senior public servants under this Recommendation on any terms and conditions necessary to protect the public interest.

Chiefs of staff and executive assistants to ministers have access to great amounts of confidential government information. However, because of their confidential relationships to ministers and because ministers have a strong interest in ensuring that they do not act improperly, the Review Panel do not think that most of the proposed conflicts of interests system is necessary for them or should apply to them. However, so that ministers may have the necessary information, the Review Panel think that chiefs of staff and executive assistants should be required to make confidential disclosure to their ministers of their financial interests and those of their spouses and minor children.

Recommendation 28

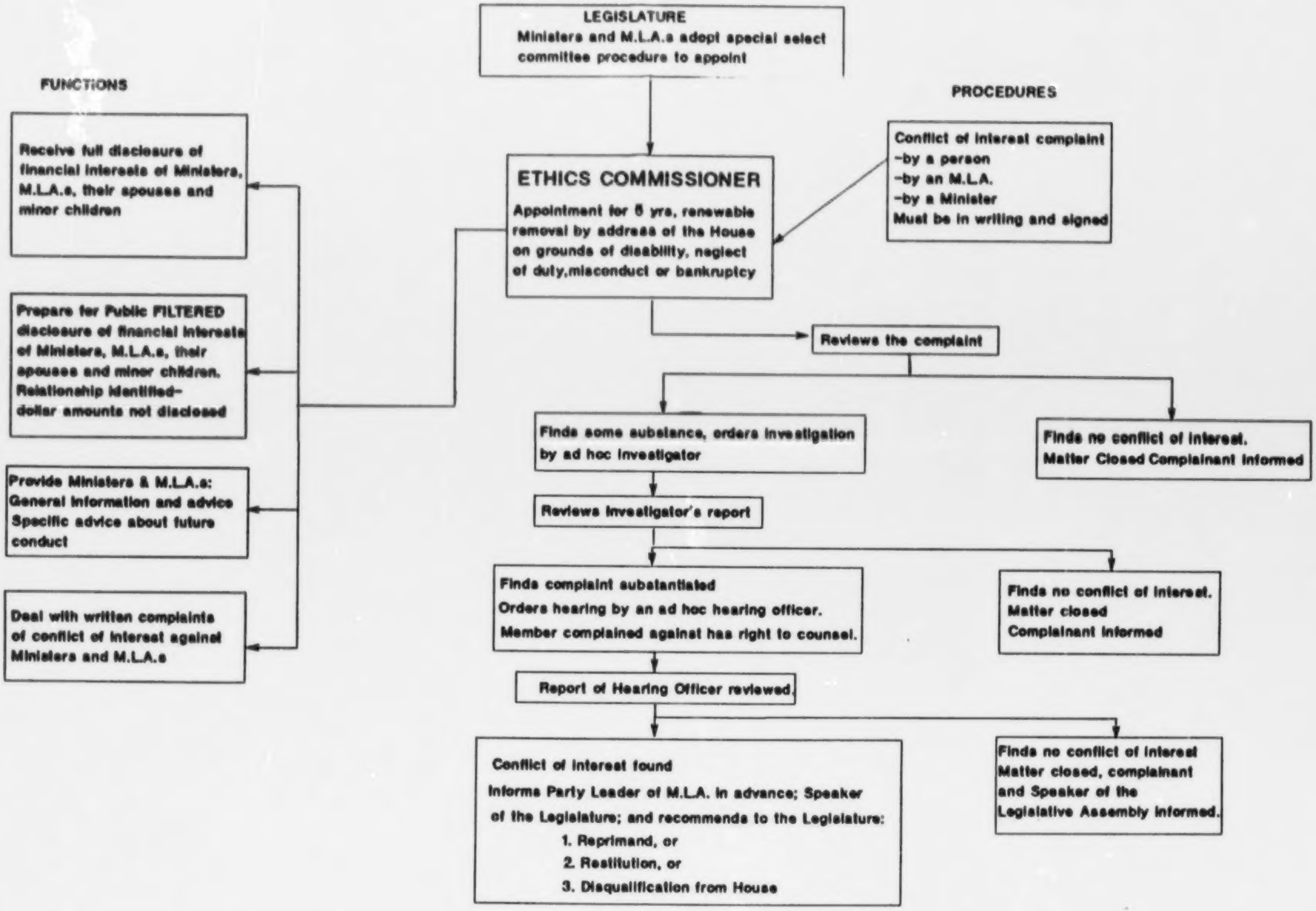
The Review Panel recommend that chief a of staff or executive assistant of a minister

(a) appointed by a minister under the order in council providing such appointments, or

(b) seconded to a minister from the public service

be required to make to the minister the same financial disclosure which ministers and MLAs are required to make to the Ethics Commissioner, such disclosure to remain confidential, and that the requirement be made, where applicable, by an amendment to the order in council, and in other cases by agreement.

ETHICS COMMISSIONER'S FUNCTIONS AND PROCEDURES


LEGISLATURE
Ministers and M.L.A.s adopt special select committee procedure to appoint
FUNCTIONS
PROCEDURES
ETHICS COMMISSIONER
Appointment for 5 yrs, renewable removal by address of the House on grounds of disability, neglect of duty,misconduct or bankruptcy
Conflict of interest complaint
-by a person
-by an M.L.A.
-by a Minister
Must be in writing and signed
Receive full disclosure of financial interests of Ministers, M.L.A.s, their spouses and minor children
Prepare for Public FILTERED disclosure of financial interests of Ministers, M.L.A.s, their spouses and minor children. Relationship identified-dollar amounts not disclosed
Provide Ministers & M.L.A.s: General information and advice Specific advice about future conduct
Deal with written complaints of conflict of interest against Ministers and M.L.A.s
Reviews the complaint
Finds some substance, orders investigation by ad hoc investigator
Finds no conflict of interest. Matter Closed Complainant informed
Reviews investigator's report
Finds complaint substantiated
Orders hearing by an ad hoc hearing officer.
Member complained against has right to counsel.
Finds no conflict of interest. Matter closed Complainant informed
Report of Hearing Officer reviewed.
Conflict of interest found
Informs Party Leader of M.L.A. in advance; Speaker of the Legislature; and recommends to the Legislature:
1. Reprimand, or
2. Restitution, or
3. Disqualification from House
Finds no conflict of interest Matter closed, complainant and Speaker of the Legislative Assembly informed.

PART II - REPORT

1. INTRODUCTION

A. ESTABLISHMENT AND FUNCTION OF THE REVIEW PANEL

The Conflict of Interest Review Panel was established by Order in Council O.C. 425/89. The Review Panel's terms of reference from the order in council are set out in Appendix 1.

The order in council directs the Review Panel to examine conflict of interest legislation and guidelines affecting Members of the Executive Council ("ministers"), Members of the Legislative Assembly ("MLAs") and some senior public servants, and to comment and to make recommendations based on our findings. It directs us to review in particular the question of ownership of Alberta Energy Company shares by ministers, MLAs and senior public servants.

We have conducted our examination. Appendix 2 describes the process through which we have gone. This report contains our comments and recommendations.

It is not the Review Panel's function to comment on particular cases, and we do not propose to do so.

B. FORMAT OF THIS REPORT

In Part I of this report, we provide an executive summary of the report, and also a more extensive summary of our recommendations and our reasons for making them. We hope that these summaries will help the casual reader.

In this Part II, we first describe briefly the existing conflicts of interests rules relating to ministers and MLAs. We then give our views about those existing rules; describe our general approach to the subject; give our views about the subject in principle and in detail; and make our recommendations for an improved conflicts of interests system for ministers and MLAs. We also make our recommendations about the ownerhip of Alberta Energy Company shares. We then deal more briefly and in more general terms with senior public servants.

In Part III, we provide a draft of legislation which would give effect to our recommendations about ministers and MLAs, other than our recommendation for the repeal of section 31 of the *Alberta Energy Company Act*. We have done this for two reasons. The first is to assure ourselves that our recommendations are coherent and can be cast into legislative language. The second is to to give the reader some idea of what legislation which would implement our recommendations might look like. In some cases, the draft legislation includes details which, in the interests of comprehensibility, are not included in our recommendations.

Appendices 1 and 2 set out our terms of reference and our method of carrying out our review. Appendix 3 reproduces existing Alberta legislation and guidelines. Appendix 4 describes the principal elements of conficts of interests systems in Canada relating to ministers and legislators, and reviews in some detail inquiry reports, legislation and directives which we think to be of particular relevance to Alberta. Appendix 5 gives a brief description of the counterpart conflicts of interests systems in the United States and the United Kingdom.

C. SCOPE OF THE REVIEW PANEL'S TERMS OF REFERENCE

Our terms of reference do not specifically refer to former ministers, MLAs and senior public servants. However, whatever the legalities may be, there is a strong public perception that a former minister or senior public servant who deals with the Government on the basis of information and influence acquired in office is in a conflict of interest position. For that reason, and because of the possibility that a former official may use information and influence acquired in office, we deal in this report with activities of former ministers and senior public servants who return to the private sector.

We have not been asked to review the determination of MLAs' remuneration or the subject of contributions to political parties and candidates. We therefore do not do so.

We should, however, make some brief observations about the subject of election contributions. This subject has been raised with us as a matter of concern, and we share the concern. It is as much at the heart of public confidence in the integrity of our elected officials as are the subjects which we deal with in this report, and we think that there are unresolved problems in it.

Problems of election finance have become almost intractable in the United States. The current public inquiry in Ontario indicates that Canada is not immune to the problem. We think that a study of election financing should be undertaken in Alberta, and efforts made to grapple with the problems, before they become great enough to undermine public confidence, or even insurmountable.

2. MINISTERS AND MLAS

A. THE REVIEW PANEL'S APPROACH

(1) ENTRUSTMENT OF POWERS

Collectively, MLAs and ministers have the power to make laws and to enlist the power of the state to enforce the laws they have made. In addition, ministers administer laws and programmes.

The electorate entrust these powers to ministers and MLAs to be used for the public benefit. It is fundamental to our system of parliamentary democracy that the powers which the public confer on elected officials must be used for the benefit of the public and not for the benefit of individuals. It is also fundamental to this report.

(2) REASONS FOR CONFLICTS OF INTEREST RULES

At the outset, the Review Panel wish to make two things clear. The first is that we do not see any evidence of a conflict of interests crisis among elected or appointed officials in Alberta today: we are satisfied that ministers and MLAs in general take a responsible and ethical approach to the exercise of their powers. The second is that the true safeguards against abuse of power are the moral and ethical sense of elected officials and the vigilance of an informed electorate. However admirable a conflicts of interests system might be, it could not reform a corrupt government or protect an apathetic public.

However, an adequate conflicts of interests system is necessary. Given responsible elected and appointed officials, and given a public which is conscious of the need for integrity in government, such a system can guard against abuses and maintain public confidence in the institutions of government.

If a minister or MLA can, by exercising a power of office, affect a private interest of the minister or MLA, there is a potential conflict between that interest and the public duty of the minister or MLA. The minister or MLA is said to be in a "conflict of interests" situation. There is a danger that the minister or MLA will exercise public power to advance a private interest. There is a greater danger that the public will lose confidence, not only in the integrity of that minister or MLA, but in the integrity of elected officials generally.

In a particular case, a course of action which will advance the private interests of a minister or MLA may also advance the public interest. A particular minister or MLA may be able to make decisions in the public interest despite prejudice to his or her private interest. Nevertheless, a minister or MLA should not act in a conflict of interests situation. Both the danger of actual abuse and the appearance of abuse are too great.

Public affairs have become more complex. The public has become less willing to accept official assurances of the integrity of government institutions. In the Review Panel's opinion, these circumstances make it imperative that Alberta adopt a more extensive conflicts of interests system, including both rules and administrative capability, than that which now exists.

Recommendation 1

The Review Panel recommend that a more comprehensive conflicts of interests system be established for ministers and MLAs in accordance with the Review Panel's later recommendations.

(3) OBJECTIVES OF A CONFLICTS OF INTERESTS SYSTEM

The first objective of a conflicts of interests system is therefore to keep to a minimum the number of conflicts of interests which arise.

The second objective is to try to ensure that, when conflicts of interests do arise, ministers and MLAs subject to them will not exercise their official powers.

The third objective is to maintain public confidence in the integrity of the institutions of government. The maintenance of that public confidence is essential for the proper functioning of parliamentary democracy. It is therefore of fundamental importance not only that ministers and MLAs in fact conduct their offices with integrity, but also that they should appear to do so.

For the reasons we have given, there is a strong public interest in ensuring that ministers and MLAs exercise their powers for the public benefit, and there is another and related strong public interest in ensuring that public confidence in the integrity of ministers and MLAs be maintained. A conflicts of interests system is established to protect those public interests.

The public, however, has another interest. It is an interest in being served by the best public servants. Anything which restricts the pool of prospective candidates for public office runs contrary to that interest. Elaborate conflict of interest rules, including requirements of disclosure of private interests and affairs, tend to inhibit qualified people from entering and staying in public life. Stringent post-employment rules tend to do the same. Onerous and punitive rules may signal a distrust of elected officials and place a stigma upon elected office.

There is a yet another interest which should be protected. Public servants, elected and non-elected, have an interest in being treated fairly. A public which expects ethical service from public servants has an ethical obligation to give fair treatment to them.

In our proposals, we have tried to strike a proper balance among these sometimes competing interests. We believe that there is a need for a more extensive conflicts of interests system. In this report we propose a system of rules, disclosure of financial interests and administrative intervention which will provide appropriate safeguards against abuse of office but which will be fair and humane toward elected officials and will not make public life unattractive to people of good quality.

We think that the system which we propose will give clear signals as to what is expected of elected officials. It will temper public disclosure of ministers' and MLA's financial interests with respect for legitimate claims to privacy. It will provide ministers and MLAs with information and advice. It will provide for the relaxation of rules to avoid hardship in specific cases. We therefore think that, while giving effect to the public interest in maintaining the actual and perceived integrity of the political process, the system which we propose will treat ministers and MLAs fairly and will not inhibit good people from running for office.

Recommendation 2

The Review Panel recommend:

(a) that an Ethics Commissioner be appointed to administer the more comprehensive conflicts of interests system which we recommend later in this report;

(b) that the Ethics Commissioner should have the functions, powers and duties set out in our later recommendations;

(c) that the Ethics Commissioner should be chosen by the Legislative Assembly and appointed by order in council;

(d) that the Ethics Commissioner

  (i) should not be a minister or MLA,

  (ii) should not have interests which would conflict with his or her duty as Ethics Commissioner, and

  (iii) could be appointed on a full time or part time basis, depending on the volume of work.

(e) that the Ethics Commissioner should be appointed for a term of 5 years, with eligibility for reappointment, and be subject to dismissal by order in council at the request of the Legislative Assembly for disability, neglect of duty, misconduct or bankruptcy.

(f) that the Ethics Commissioner, the Ethics Commissioner's staff, investigators and hearing officers, and persons who make allegations to and provide information and evidence for the Ethics Commissioner, should be given appropriate protection from legal liability.

(Draft legislation sections 25-31 and 35.23)

(4) CRITERIA FOR CONFLICTS OF INTERESTS RULES

We will now set out in more concrete form the criteria which a conflicts of interests system should meet:

(a) it should tell elected officials in a clear and comprehensible way what is expected of them;

(b) it should be designed to minimize the number of conflict of interests situations which will inevitably arise;

(c) it should set standards of conduct high enough to maintain public confidence in the integrity of government;

(d) it should not set standards or impose requirements which are so unfair or unreasonable that they will discourage an undue number of qualified people from entering or staying in public life.

Some limitations on the scope and application of a conflicts of interests system must be recognized. These are:

(a) some conflicts of interests are too trivial to take into account and should be ignored;

(b) some conflicts of interests arise through mere human error and should not be punished severely;

(c) ministers and MLAs must of necessity deal with laws and practices which affect all citizens, including themselves.

B. LEGISLATION AND GUIDELINES IN FORCE IN ALBERTA

(1) THE GENERAL LAW

Ministers and MLAs are subject to the general law of the land. This includes all federal and provincial statutes and regulations.

In particular, the general law includes the criminal law, with its sanctions against receipt of bribes, fraud and other crimes. These are a necessary part of the rules relating to conflicts of interests, but they apply only to cases of actual dishonesty. A conflicts of interests system applies much more broadly.

(2) PROVINCIAL LEGISLATION AND GUIDELINES

Alberta legislation and guidelines relating to conflict of interests rules applicable to ministers and MLAs are reproduced in Appendix 3. They are as follows:

(i) the *Legislative Assembly Act*.

The *Legislative Assembly Act* applies to all MLAs and therefore applies to ministers except in the occasional case in which a minister, for a short time, is not an MLA. It

(a) prohibits MLAs from holding many salaried Government offices;

(b) prohibits MLAs and persons directly associated with them from becoming involved in contracts with the Government and Government agencies;

(c) prohibits MLAs and persons directly associated with them from receiving payments from the Government, other than remuneration which is authorized by law and payments which are available to the public or a broad class of the public; and

(d) requires MLAs to make public disclosure of the names of persons directly associated with them, including spouses and some private companies and partnerships, and goes on to provide for the annual publication by the Provincial Treasurer of a statement of Government money paid to each MLA and persons directly associated with the MLA.

If an MLA puts shares of a company into a blind trust, the company is not directly associated with the MLA for the purposes of the *Legislative Assembly Act*, even though it would otherwise be.

If an MLA is in breach of the Act, an elector may bring an action for a finding that he is disqualified. The Court of Queen's Bench may make the finding. However, it is the Legislature itself which disqualifies the MLA.

(ii) Standing Order 33 of the Legislative Assembly.

Standing Order 33 provides that an MLA is not entitled to vote on a matter in which the MLA has a direct pecuniary interest. It goes on to require the MLA, when such a matter comes up, to declare the interest and leave the House.

Under section 10 of the *Legislative Assembly Act*, the Legislature has power to impose punishment for the breach of an order of the Legislature. Presumably, a breach of Standing Order 33 falls within section 10, though we are not aware that a breach of the standing order has ever been brought before the Legislature for such action.

(iii) Premiers' directive, or "guidelines".

By a ministerial announcement in 1973 (which has been confirmed by Premier Getty), Premier Lougheed directed that every minister

(a) file with the Clerk of the Legislative Assembly a public disclosure statement listing all land, private companies and business entities in which the minister, the minister's spouse or the minister's minor children have an interest and which do business in Alberta;

(b) dispose of or put into a trust over which the minister has no control all shares in public companies whose business might be materially affected by the decisions of the Government.

There is no Alberta legislation or guideline concerning post-employment activity on the part of a minister or MLA.

C. A PROPOSED CONFLICTS OF INTERESTS SYSTEM

(1) ADMINISTRATION OF THE SYSTEM

(a) Need for administrative intervention

A conflicts of interests system must have rules. Rules, however, are not enough for a fair and efficient conflicts of interests system. Rules are rigid. A rule which is strong enough to protect the public interest in most cases will impose upon specific individuals in specific cases disadvantages which are unfair and are not required by the public interests.

We are convinced that a conflicts of interests system should provide for some form of administrative intervention. Judgment must be applied to adjust conflicts of interests principles and rules to specific cases and to perform other functions which we will describe below. Administration of the conflicts of interests system need not, and should not, involve a substantial bureaucracy, but it should be sufficient to provide flexibility in the way in which the system applies to individuals.

We are also convinced that the ultimate control over a conflicts of interests system should remain with the Legislative Assembly. The independence of MLAs is fundamental to parliamentary democracy, and the responsibility for the proper functioning of the Assembly should rest squarely upon the elected representatives of the people. While an entity other than the Assembly should administer the system, it should do so under certain clearly defined powers, and the Assembly should have the ultimate power to sanction or not to sanction its members.

The need for administrative flexibility pervades our later recommendations. We will therefore address this subject first.

(b) Where administrative intervention is needed

Later in this report, we will discuss and make recommendations about the ways in which the proposed administrator should intervene at various points in the conflicts of interests system. We will, however, sketch them in briefly here. They are as follows:

(i) provision of authoritative advice to MLAs

In a grey area, an MLA or minister should be able to obtain authoritative advice as to whether or not a course of action will be in breach of a conflict of interest or disclosure rule, rather than having to gamble on the correctness of his or her own interpretation or legal advice.

(ii) monitoring and filtering of financial information

Intelligence should be applied to ensure that financial information publicly disclosed by ministers and MLAs will contain what the public needs to know but will otherwise respect the privacy of themselves and their families.

(iii) investigation of conduct and reporting

The conduct of proceedings to determine whether a minister or MLA has been in a conflict of interest situation, the finding of the facts, and the formation of an initial opinion about guilt and sanction (though not the ultimate decision and sanction), should be put on an objective basis which is independent of the political process and should be provided to the Legislative Assembly.

(iv) post-employment restrictions

It should be possible to relax post-employment restrictions on the economic activities of former ministers when the public interest can be protected without the full application of the restrictions.

(c) Existing forms of administration in Alberta

The existing Alberta conflicts of interests system provides for two forms of administrative intervention.

First, the Premier can administer the financial disclosure guidelines for ministers. He can take steps to see that ministers conform to the guidelines. He can adjust the application of the guidelines. He can exercise discretion as to when a minister should be dismissed for a breach of the guidelines. The foundation of his authority is his ability to bring about the dismissal of a minister. For reasons which we will give later in this report, we think that a significantly different disclosure system, with a significantly different form of administration, is needed.

Second, the Court of Queen's Bench, under section 33 of the *Legislative Assembly Act*, can make a finding as to whether or not an existing or proposed contract, or a past or prospective payment from the Government has disqualified or will disqualify an MLA, including a minister. In the case of an existing contract or past payment, the court can go on to give directions as to how the MLA can remove the cause of disqualification or make restitution of a payment, and can supervise the MLA's compliance.

We are not aware that an MLA has ever made an application under section 33. It is likely that the cost, delay, formality and publicity involved in a court application will almost always inhibit an MLA from doing so. While the principle of the section is, in our opinion, good, we do not think that it provides a practical solution for the problems of ministers and MLAs.

(d) Administration elsewhere in Canada

Premiers' guidelines also exist in British Columbia, Quebec, and Newfoundland, with the same potential for administration of the guidelines by the premiers of those provinces.

Prime Minister's guidelines exist at the federal level. The existing federal *Conflict of Interest and Post Employment Code for Public Office Holders*, which applies to ministers, parliamentary secretaries and some political staff of ministers (and which also applies to many other non-elected officials as well), is based on a directive from the Prime Minister and can be administered by him. The Code also, however, provides for a significant degree of administrative intervention by the Assistant Deputy Registrar General of Canada ("ADRG"). The ADRG is an appointed official who is technically located within the Department of Consumer and Corporate Affairs, but he has a line of communication with the Prime Minister's Office and, if necessary, with the Prime Minister himself.

Federal ministers and the others to whom the Code applies make complete disclosure to the ADRG of all assets and liabilities, other than assets which are of a particularly private nature. The ADRG can, in case of doubt, form an opinion about the propriety of an office holder's financial holdings and prescribe divestiture or less rigorous dealing with assets or interests which will protect the public interest. This form of administration is functioning actively and, so far as we can see, functioning well.

How active a premier is in the administration of guidelines of this kind depends upon the view which the premier takes of his function. It will be noted from the Caplan Report (see Appendix 4) that the committee of the Ontario Legislature which made the report thought that the Premier of Ontario should have been more active than he had been.

Two other minor forms of administrative intervention exist in Canada.

First, in Quebec, the National Assembly can appoint a "jurisconsult" who can render opinions as to whether a member of the assembly has violated provisions of the *National Assembly Act* respecting incompatible offices and conflicts of interest. An opinion is confidential, at the member's option, but it gives the member protection against a later charge of violating the Act. The jurisconsult is also empowered to make recommendations about the application of the conflicts of interests provisions of the Act.

Second, in New Brunswick and Nova Scotia, MLAs must make disclosure of their financial interests to a designated judge, who has powers of review (and, in New Brunswick, advice) and investigation.

While these forms of administrative intervention are useful, we do not think that any of them is sufficient.

There are two Canadian models for the kind of administrative intervention which, in our opinion, is desirable for an Alberta conflicts of interests system. One exists and is in operation in Ontario. The second is proposed by federal Bill C-46, which was introduced into the House of Commons in November 1989. Each of these models provides for, or would provide for, all or most of the administrative functions which we think should be performed.

There are many differences of detail between the federal and Ontario models. The differences which we think are significant at this stage of our report are as follows:

(i) the administrative intervention in Ontario is provided by a Commissioner appointed by the Lieutenant Governor in Council on the address of the Legislature. Under federal Bill C-46, the administrative intervention would be provided by a three-member Commission. The chairman would be named by the Prime Minister in consultation with the other party leaders. One member would be named at the instance of the other party leaders.

The other member would be named at the instance of the Prime Minister.

(ii) The Ontario Commissioner is a part-time appointment with minimal staff. The federal Conflict of Interests Commission would be supported by a Registrar and a significant staff. The federal Commission would, of course, have broader responsibilities, given the much greater number of legislators, and given that it will presumably continue to discharge the ADRG's functions with respect to senior public servants appointed by order in council.

(iii) The Ontario Commissioner, when reporting to the Speaker of the Legislative Assembly that an MLA is in breach of a duty under the conflicts of interests statute, may recommend that the MLA be reprimanded or expelled. The federal Conflict of Interests Commission would not have power to recommend a sanction.

The Ontario system is new. It was established by the *Members' Conflict of Interest Act*, which was given royal assent in February 1988, and has been in operation for less than two years. So far, it appears to be functioning effectively.

A somewhat different kind of model is common in the United States. We will refer only to the Wisconsin model, which we found attractive.

A Board of Ethics administers the Wisconsin system. The Board is composed of non-political, volunteer, part-time members appointed by the Governor of the state. It does not have the power to filter financial disclosure statements, which are fully public. It does have enforcement powers which the Ontario Commissioner does not have, that is, a power to impose a fine and a power to order an official to conform to the code of ethics which is included in the conflicts of interests statute. There is also a provision that it can make "such other recommendation or order as may be necessary and appropriate and is consistent with the intent and purposes of this subchapter".

One of the Wisconsin board's principal functions is giving advice. When necessary, it conducts investigations and makes reports. While all decisions are made by the board, its day to day business is conducted by its executive director and a small staff. Customarily, it retains an outside consultant to conduct an investigation and a retired judge to conduct a hearing into an allegation of a breach of the statutory code, thus keeping separate the sensitive functions involved in the enforcement system. The system has been in operation for some 13 years and appears to function satisfactorily.

(e) A single administrator, commission or board?

We have given our opinion that some form of administrative intervention is necessary at various points in a conflicts of interests system. We have also given our opinion that the present arrangements for administrative intervention in the Alberta conflicts of interests system are no longer sufficient. We turn now to a discussion of the form of administrative intervention which should be provided.

It is convenient to consider first whether the administrator of the conflicts of interests system which the Review Panel will propose should be an individual or whether a commission or board should be established.

Some considerations suggest that the administrator should be a multi-member commission or board. These are as follows:

(i) The questions with which the proposed administrator will have to deal are difficult and complex and will include many disputed or disputable questions of ethics and high policy. Decisions by one individual may be idiosyncratic and may not take into full account all the conflicting considerations.

(ii) A multi-person entity may be more credible, and the Legislature may be more willing to leave the interests of MLAs in the hands of a multi-person entity.

As we have noted, the Wisconsin model provides for a multi-member entity, and we are told that this has been found effective and useful. Federal Bill C-46, if enacted will provide for a multi-person entity.

Other considerations suggest that the administrator should be a single person. These are as follows:

(i) While some questions may be difficult and complex, they are no more difficult and complex than questions which single judges are accustomed to dealing with, and the answers will be determined in accordance with well-understood standards.

(ii) An individual with proper qualifications and with the respect of the community can be just as credible as a group, and possibly more so.

(iii) An individual can operate more efficiently, quickly and effectively than a group which must be got together to make decisions.

We note:

(i) that the Ontario Conflict of Interests Commissioner is able to deal with the problems of Ontario ministers and MLAs on a part-time basis and with the assistance of one full-time executive assistant and occasional part-time secretarial help. While we suggest in this report that the administrator perform some functions which the Ontario Commissioner does not perform, we do not see any reason why the aggregate of problems of Alberta ministers and MLAs should be significantly greater than the aggregate of problems of Ontario ministers and MLAs.

(ii) that the present Ontario Commissioner, who is a retired chief justice of the Ontario High Court, commands the respect of MLAs and public, and we expect that an individual who will command equal respect can be found in Alberta when needed.

In our view, a single individual, if properly qualified, would be able to perform satisfactorily all the functions which we think that the proposed administrative entity should perform. We accordingly think that that is the model which should be adopted. We think that that individual should be called the "Ethics Commissioner" to emphasize that his or her overriding function is to promote adherence to high standards of ethics in government.

(f) The Ethics Commissioner

In Wisconsin, the Ethics Board is chosen by the Governor. It is understood that members of the board will not be current members of any political party and that they will not have run for political office within a stated period of time. The purpose is to ensure that the board is as far removed from the political process as is practicable. This seems to work in Wisconsin, and it might well work in Alberta.

Nevertheless, we do not think that an appointment affecting all MLAs as well as minsters should be made by the Premier alone. One better alternative would be to make the appointment multi-partisan by involving both the Premier and the leaders of the non-Government parties (as federal Bill C-46 would do). Another would be to try to make it non-partisan by having the Legislative Assembly make the choice in the same way as it chooses the Ombudsman (as Ontario does).

We think that the considerations which suggest an appointment process involving the Premier and the leaders of the other parties are as follows:

(i) The unusual nature of the qualifications is such that, rather than asking for applications, it will be necessary to identify and approach specific individuals, and it can be argued that this can best be done by an executive operation.

(ii) If the party leaders agree, as they do on the Speaker, the individual will be assured of recognition by the Legislature.

We think that the considerations which suggest that the selection should be made by the Legislative Assembly are as follows:

(i) The Select Standing Committee on Legislative Offices would be as capable as the party leaders of identifying and approaching the appropriate individual, if that is the way the appointment should be made, or taking whatever steps are necessary for the purpose.

(ii) An individual appointed under a resolution of the Legislative Assembly, supported by all the parties, as the Ombudsman is appointed, is just as likely to receive the respect of the Assembly as is one appointed by the party leaders.

(iii) As a matter of constitutional propriety and protecting the independence of the Legislature, an official whose functions involve the status and rights of MLAs should be chosen by the Legislature. This would be particularly so in the case of an MLA not associated with a party, which is not unknown in Alberta, though not common.

(iv) Independent MLAs, while not common in Alberta, have not been unknown. Selection by the Legislative Assembly would give an independent MLA a voice in the selection. Selection by the party leaders would not.

We find the latter arguments persuasive. We therefore think that the Ethics Commissioner should be chosen by the Legislative Assembly and appointed by order in council. It would be appropriate for the Select Standing Committee on Legislative Offices, who choose the Ombudsman, to choose the Ethics Commissioner, but that would be for the Assembly to decide.

The next question is whether the law should prescribe qualifications for the Ethics Commissioner.

It is the Review Panel's opinion that the Ethics Commissioner should be a person with extensive judicial experience, or at least legal experience, which would qualify him or her to perform the functions of ethics adviser and adjudicator. A respected retired judge is the Ontario Commissioner, and that seems to us to be the kind of person who should be sought after in Alberta. However, while we hope that the Legislature will have regard to this opinion, we do not think that any such requirement should be written into law. The Legislature should make its own choice.

However, the Ethics Commissioner should not be a minister or MLA and should not have interests which would conflict with the duties of the Commissioner. The appointment could be either part time or full time, depending upon the volume of work.

There are some further questions:

(i) By whom and upon what grounds should the Ethics Commissioner be subject to dismissal? We think that the process which applies to appointment should also apply to dismissal, and we think that the grounds for dismissal should be the same as the grounds for the dismissal of the Ombudsman.

(ii) For what term should the Ethics Commissioner be appointed? We think that the term should be 5 years, which is the same as the Ombudsman.

(iii) Should the Ethics Commissioner be eligible for reappointment? Federal Bill C-46 would declare the members of the Conflict of Interests Commission ineligible. This would no doubt maximize the independence of the members. However, we do not think such an extreme measure to be necessary. Apart from other considerations, if the reappointment is, effectively, to be an all-party process, the individual will have little interest in pleasing any one party as against another. Appointments under Bill C-46 would be made on a party basis.

Finally, there is a question as to the resources which the Ethics Commissioner should have. We have already expressed the view that an extensive bureaucracy is not needed and should not be created. We have noted that in Ontario, a part-time Conflict of Interests Commissioner with a full-time executive assistant is able to discharge for that province functions similar to those which the Ethics Commissioner should perform for Alberta. It would not be appropriate for us to make specific suggestions about the Ethics Commissioner's administrative structure, but, while we do suggest some additional functions for the Ethics Commissioner, we do not envisage that they would require a significantly more extensive administrative structure than the Ontario model.

(g) Protection of Ethics Commissioner and others

We are of opinion that the law should protect the Ethics Commissioner from legal liability for what he or she does in carrying out his or her duties, so that he or she cannot be harassed by legal proceedings and will be able to proceed confidently. The protection should extend to his or her staff, investigators and hearing officers.

We are also of the opinion that the law should also protect from legal liability persons who make allegations to the Ethics Commissioner and persons who provide information and evidence in the preliminary investigations and hearings to be conducted under our proposals. It now protects people who participate in proceedings before courts and before professional bodies with investigatory powers. No doubt some of the persons who receive the protection will be dishonest and malicious, but it is necessary in the public interest protect everyone in order to ensure that there is a free flow of information to the Ethics Commissioner.

(h) Results of consultation

Two briefs filed with the Review Panel advocated the establishment of a commissioner along the Ontario lines. When the Ontario model was described to others whom we interviewed, there was general agreement that it would be acceptable and even desirable. While these reactions were given on the spur of the moment, we have not received any second thoughts from those interviewed.

We should note also that we were told in October 1989 by the Hon. Gregory Evans, the Ontario Conflict of Interests Commissioner, that the leaders of the Ontario political parties had all indicated to him that they are content with the operation of the Ontario system.

We think that the consultation which we have described has indicated that an administrative system such as that which we propose in this report would, in general, be acceptable to those who would have to work under it. Indeed, we think that several of the aspects of that administrative system will be, and will be seen to be, of considerable benefit to the ministers and MLAs who would work within it.

(i) Formal Recommendations

Recommendation 3

The Review Panel recommend:

(a) that an Ethics Commissioner be appointed to administer the more comprehensive conflicts of interests system which we recommend later in this report;

(b) that the Ethics Commissioner should have the functions, powers and duties set out in our later recommendations;

(c) that the Ethics Commissioner should be chosen by the Legislative Assembly and appointed by order in council;

(d) that the Ethics Commissioner

  (i) should not be a minister or MLA,

  (ii) should not have interests which would conflict with his or her duty as Ethics Commissioner, and

  (iii) could be appointed on a full time or part time basis, depending on the volume of work.

(e) that the Ethics Commissioner should be appointed for a term of 5 years, with eligibility for reappointment, and be subject to dismissal by order in council at the request of the Legislative Assembly for disability, neglect of duty, misconduct or bankruptcy.

(f) that the Ethics Commissioner, the Ethics Commissioner's staff, investigators and hearing officers, and persons who make allegations to and provide information and evidence for the Ethics Commissioner, should be given appropriate protection from legal liability.

(Draft legislation, sections 25-31 and 35.23)

(2) ETHICAL PRINCIPLES

(a) Need for a statement of ethical principles and rules

The law does not now tell ministers and MLAs in any comprehensive or intelligible way what their ethical duties are. We turn now to the question whether or not it should do so.

It can be, and is, argued that putting ethical duties into law is not necessary, and that it is better to rely on the sense of honor of ministers and MLAs and their ability to tell right from wrong.

It can also be, and is, argued that putting ethical duties into law is not desirable. Doing so makes law, rather than a sense of ethics, the touchstone of rightful conduct.

It can also be argued, and is, that if law is to be specific enough to give guidance in specific cases it will have to be long, detailed and complex.

It can also be argued, and is, that morality cannot be legislated.

These considerations suggest that the law should not say anything about the ethical duties of ministers and MLAs. There are, however, considerations which suggest a different answer.

First, fairness requires that the law tell people what their duties are. If ministers and MLAs who are accused of breaches of ethical principles are to be subject to losing their careers and reputations, they should be told what conduct will bring about those results.

Second, proclaiming in law the ethical standards to which ministers and MLAs are required to adhere and adopting measures to promote adherence to them should improve the public perception and increase public confidence.

Third, stating principles and rules in law will increase adherence to them. Legislating morality may not affect the conduct of amoral people. People of ordinary ethical standards, however, respect the law and are likely to take to heart principles and rules which are stated in it; and people of somewhat lower ethical standards are likely to see that it is to their advantage to adhere to it.

Fourth, specific measures designed to minimize conflicts of interests are much more likely to be successful if they are seen as part of a coherent system. A specific example is disclosure of financial interests, which, we think, can better respect privacy interests if the basic purposes of the conflicts of interests system are stated and understood.

For all these reasons, the Review Panel think that the law should state the general ethical principles which should govern the conduct of ministers and MLAs in the conflicts of interests area. Ethical principles themselves should not prescribe or proscribe specific conduct. However, the law should go on to prescribe some specific rules which are required in order to give effect to the general ethical principles.

(b) Statement of ethical principles and rules

The basic principle of public life is that the offices and powers of ministers and MLAs are entrusted to them for the public benefit. We think that that basic principle should be stated in law.

It follows from the basic principle that a minister or MLA who accepts office is subject to three duties. One is a duty to exercise his or her office and the powers associated with it for the public good (as he or she perceives it). The second, which is the obverse side of the first, is a duty not to exercise the office and powers for the private benefit of the minister or MLA or anyone else. The third is a duty to exercise the office and powers in such a way as to maintain public confidence in the institutions of government. These general ethical duties should be stated in law.

In one sense, a statement of these general ethical duties will say everything that needs to be said. We think, however, that there are some specific statements which should be made and some specific duties which should be imposed. These duties are as follows:

(i) Integrity, objectivity and impartiality

A duty to perform the minister's or MLA's duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in his or her integrity, objectivity and impartiality.

It is destructive of public confidence in the institutions of government if the public see government decisions unfairly favouring those with influence. Ministers and MLAs should be careful to see that this does not happen.

(ii) Self-disqualification

A duty not to take part in any decision, action, or course of official conduct, which might affect the private interests of the minister or MLA or those of a spouse or minor child.

Where a matter requiring such a decision comes before the Legislature or the cabinet, as the case may be, the minister or MLA is under a duty declare his or her interest and withdraw from the meeting without voting or participating in the consideration of the matter.

Where such a matter requires a decision from a minister, the minister should request another minister to deal with the matter.

These duties do not apply when the interest of the minister or MLA is shared with the public generally or a broad class of the public.

The rule that an official who has a private interest should not participate in an official act or decision which might affect that interest is generally accepted in Canada. Standing Order 33 of the Legislative Assembly now requires a member who has a direct pecuniary interest in a matter coming before the Assembly or a committee to declare his interest and withdraw. A similar rule should apply to a minister in cabinet or a committee and elsewhere when acting in a ministereal capacity.

The duty of a minister or MLA should also include a duty not to exercise his or her powers when an interest of his or her spouse or minor child might be affected. The rule need not apply when the financial affairs of the official and the spouse have been separated, but it should apply to a person of the opposite sex who is living with the minister or MLA on a *bona fide* domestic basis although not married to him or her.

We have not thought it necessary to define "conflict of interest". We think that the duty to refrain from acting when the private interests of the minister or MLA, or of the spouse or minor children of the minister or MLA, might be affected is sufficiently clear. Of course, the duty can apply only if the minister or MLA knows of the interest.

(iii) Use of influence

A duty not to use, except in the performance of public duties, the powers or influence of office to influence the Government or a department or agency for the benefit of the minister or MLA or any other person.

This is another specific application of the general duty not to exercise the powers of office for private benefit. Because of the exception it would not exclude intervention motivated by the public interest, including an MLA's normal work on behalf of constituents.

(iv) Information not available to the public

A duty, except in the performance of public duties, not to use or communicate for the benefit of the minister or MLA or another person information gained in the course of carrying out the office or activities related to it.

This is a specific application of the general duty not to excercise the powers of office for private benefit. The exception is required because the conduct of public business requires the communication to private persons of information which they will use for their own benefit, which is, of course, perfectly appropriate so long as the proper conduct of public business is the motivation.

(v) Gifts and benefits

A duty not to accept a fee, gift or other benefit that is connected directly or indirectly with the performance of duties of office, except

(i) a salary and other payments prescribed by law, and

(ii) a gift or personal benefit that is received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office, if the value is $200 or less. If the value of a gift or benefit exceeds $200, the minister or MLA should be able to keep it if the Ethics Commissioner approves.

A minister or MLA should, under the disclosure provisions which we recommend later in this report, disclose all gifts and benefits, other than those received from family members, which exceed more than $200, or which, from any one source, exceed a total of $200 in any calendar year.

The subject of fees, gifts and benefits is difficult, delicate and controversial.

People who deal with government, or who would like to, often extend hospitality or make gifts to officials, elected and non-elected, who may influence the decisions of government. So do people whose interests may be affected in some other way by the actions of officials.

The receipt of a gift does not of itself do any actual harm (as differentiated from the appearance of harm) to the public interest. It is only if official conduct is influenced that actual harm may occur.

Officials are likely to say that their judgment and official action cannot be bought for a bottle of liquor, a meal, or a stay at a resort. In most cases this is true. There will be no direct connection between a gift or benefit, short of a bribe, and any official action.

These considerations, however, do not lead to the conclusion that the acceptance of gifts and benefits by elected officials is not contrary to the public interest.

First, it is safe to say that people who deal with governments are not usually inspired to confer benefits on government officials by altruism or disinterested friendship. Indeed, they will usually show the cost of the benefits as expenses of doing business on profit and loss statements, and they will usually deduct it from taxable income on the grounds that it is money laid out to earn income.

Second, it is useful to cultivate the good will of officials. Without anything being wrong, friendship with officials tends to make access easier and to make views more credible.

Third, the public, and particularly someone whose interests are contrary to those of the donor of a benefit, will have a perception, which is rational even if the facts of the particular case do not support it, that preferential treatment is likely.

There are no specific rules in Alberta relating to the acceptance of gifts and benefits by ministers and MLAs: they are left to form their own judgments and to pay political penalties if they are wrong. However, there is a provision about gifts in the *Code of Conduct and Ethics* which appears in Appendix 3 and was issued under ministerial authority and applies to the public service. The code prohibits the acceptance of gifts, favours and services. The only exceptions are the normal exchanges between friends, normal hospitality between persons doing business together, and gifts made under protocol and for participation in public functions. The considerations which apply to the public service in this regard apply, in the Review Panel's opinion, to elected officials.

The Ontario *Members' Conflict of Interest Act* prohibits Ontario MLAs from accepting fees, gifts and benefits connected directly or indirectly with the exercise of office, except limited protocol gifts.

The payment of fees and honoraria is a slightly different, though related, subject. Although it does not, so far as we know, constitute a great problem in Alberta, it is a great problem in the United States. The practice of accepting fees and honoraria for speaking appearances has become so embedded there that, in order to get a bill through the House of Representatives to enact legislation prohibiting the acceptance of fees and honoraria, it was necessary to replace them by an increase in Congressmen's salaries of approximately one third. We think that fees and honoraria connected with office should be treated in the same way as gifts and benefits.

(c) "Recusal registries" and delegation of functions

The Parker Report (see Appendix 4) proposed that a formal system be established to prevent a minister from dealing with, or even knowing of, any public matter which might possibly affect his private interests. Under the proposed system, each minister would establish in his or her department a register of his or her financial interests and would designate a departmental official to see that matters involving the disclosed interests never reach the minister. We mention this proposal because we received a brief strongly recommending the establishment of such "recusal registers".

We see problems with such a proposal.

First, the "recusal registry" system could not police everthing which comes to a minister. The Premier and other ministers speak to a minister. Outsiders speak to a minister. These contacts could not be effectively policed. A minister's mail brings matters to his attention, and we do not think that it would be appropriate to require every minister to have his or her mail read, and to some extent censored, by a departmental official. We start by being doubtful about the desirability of erecting between a minister and things which affect his private interests a dike which would be leaky but which would be mistakenly thought to be effective.

Second, there are things that must be done by ministers by law, and there are things that ought to be done by ministers because they require political decisions at the highest level. A departmental official could not do these things. To make the system work, the designated departmental official would have to be authorized to take such matters to another minister for decision. This authority could be given, but we think it awkward to have a subordinate official approach another minister without his or her own minister's knowledge and consent.

Third, and most important, it seems to us that the proposal would distort responsibilities in ways which are simply not consistent with the principle that a minister should take responsibility for his or her own actions.

The designated departmental official would have to consider every matter going to the minister to determine whether it could affect the list of the minister's interests, which would have to be kept either in the designated official's file or in his head. This would require a high degree of judgment. Upon discovering a matter which does appear likely to create a ministerial conflict of interest, the designated official would have to decide whether the matter could be dealt with by a departmental official or whether it required ministerial attention.

If the decision was that it could be dealt with by a departmental official, the designated official would presumably refer it to that official, probably the deputy minister, or attend to it himself or herself. If the decision was that it could not be dealt with by a departmental official, the designated official, as we have said, would presumably have to take it off to another minister.

The Review Panel simply do not think that it is necessary or desireable to establish an elaborate system to keep a minister in the dark about something which is going on in his or her department. It must be the minister who is responsible for recognizing a conflict and for taking steps to disqualify himself or herself. A minister ought not to be able to shelter behind the judgment of a departmental official on such a vital subject.

The Review Panel prefer the Ontario approach. Under it, a minister who finds himself or herself in a conflict position on a matter that requires ministerial attention is required to delegate to another minister his or her functions in connection with the matter. If it is something that can be dealt with by a departmental official, the minister is responsible for declaring his interest and delegating it to that official; this does not require any special provision in the law.

(d) Formal Recommendations

Recommendation 4

The Review Panel recommend that the law state that the office and powers of a minister or MLA are entrusted to the minister or MLA to advance the public interest and are subject to the duties set out in the Review Panel's later recommendations.

(See draft legislation, section 31)

Recommendation 5

The Review Panel recommend that the law state that ministers and MLAs are under the following general ethical duties:

(a) a duty to exercise their offices and powers for what, in their perception, is for the benefit of the public.

(b) a duty not to exercise their offices or powers for private benefit.

(c) a duty to exercise their offices and powers in such a way as to maintain public confidence in the institutions of government.

(See draft legislation, section 32)

Recommendation 6

The Review Panel recommend that the law state that ministers and MLAs are under the following specific duties:

(a) a duty to perform the minister's or MLA's duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in his or her integrity, objectivity and impartiality.

(b) a duty not to take part in any decision, action, or course of official conduct, which might affect the private interests of the minister or MLA or those of a spouse or minor child.

Where a matter requiring such a decision comes before the Legislative Assembly or the cabinet, as the case may be, the minister or MLA is under a duty to declare his or her interest and withdraw from the meeting without voting or participating in the consideration of the matter.

Where such a matter requires a decision from a minister, the minister should request another minister to deal with the matter.

These duties do not apply when the private interest of the minister or MLA is shared with the public generally or a broad class of the public.

(c) A duty not to use the minister's or MLA's position or powers of office to influence the Government or a department or agency for the benefit of the minister or a spouse or child, or, except in the performance of public duties (including normal constituency activities), for the benefit of any other person.

(d) a duty not to use or communicate for the benefit of the minister or MLA or a spouse or child, or, except in the performance of public duties, for the benefit of any other person, information acquired by the minister or MLA in the course of his office and not available to the public.

(e) a duty not to accept a fee, gift or other benefit that is connected directly or indirectly with the performance of duties of office, except

  (i) a salary and other payments prescribed by law, and

  (ii) a gift or personal benefit that is received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office, if the value is $200 or less. If the value exceeds $200, the minister or MLA should be able to keep the gift or benefit if the Ethics Commissioner approves, but the gift or benefit should be included in the public financial disclosure statement provided for in recommendations made later in this report

(See draft legislation, section 33)

Recommendation 7

The Review Panel recommend that the duties of a minister or MLA in relation to his or her spouse under Recommendation 6

(a) do not extend to a spouse with whom a minister or MLA has entered into a separation agreement or whose mutual support obligations and property rights have been dealt with by a court.

(b) do extend to a person with whom the minister or MLA is living in a conjugal relationship outside marriage.

(See draft legislation, section 21(e))

Recommendation 8

The Review Panel recommend that the same duty not to accept fees, gifts or benefits connected directly with the exercise of the office of a minister or MLA should extend to the minister's or MLA's spouse, with the inclusion and exclusion set out in Recommendation 7, and minor children.

(3) DISCLOSURE OF FINANCIAL INTERESTS

(a) Existing financial disclosure systems

Disclosure of financial interests is an integral part of many conflicts of interests systems. Federal Canada, all the provinces and territories, the United States at the federal and state levels and the United Kingdom House of Commons, all require it. Who discloses, to whom disclosure is made, and what is disclosed, vary from place to place, but disclosure is a device used by all of them.

In Canadian systems, where disclosure statements are required from ministers and legislators, they can usually be seen by the public. New Brunswick and Nova Scotia are exceptions. In Prince Edward Island, disclosure statements can be inspected, but only with the approval of the Auditor General.

In the opinion of the Review Panel, a disclosure system for ministers and MLAs which does not result in public disclosure would not be suitable in Alberta today, though, as will be seen, we think that the conflicts of interests system should filter out financial information which the public does not need to know.

In Alberta, MLAs now have to disclose publicly the names of persons "directly associated" with the MLA, and the Provincial Treasurer annually issues a statement showing what government money has gone to each MLA and the persons directly associated with the MLA. In addition, ministers have to disclose some assets publicly.

(b) Objections to a public financial disclosure system

The first objection to a public disclosure system has to do with fairness and privacy.

Society recognizes privacy as an interest to be protected. The desire not to have one's financial affairs made public is legitimate and must be respected. It appears unfair to require elected officials to disclose their financial affairs publicly when other people are not required to do so.

These objections have force. However, the Review Panel see three answers to them. The first is that, in ordinary circumstances, the disclosure system which we propose will disclose to the public only the existence of financial interests and relationships. It will not provide information about values and amounts, and will thus invade privacy as little as possible. The second is that, as long as the rules are clear, an individual can decide whether to accept the necessary derogation from privacy as a necessary condition of achieving public office. The third is that the public interest in disclosure overrides the privacy interest of the individual minister or MLA.

A further objection is that the requirement of public disclosure reflects suspicion of the motives of ministers and MLAs. In reply to this, the Review Panel say that an adequate public disclosure system may be expected actually to reduce any suspicion that may exist, and to raise the public's regard for elected officials, who will be able to say with truth that their financial lives are open books.

A further objection is that the prospect of having to make public disclosure of their financial affairs is likely to inhibit good people from running for the Legislature and from accepting cabinet positions. Certainly, the Review Panel cannot say that a disclosure system will not inhibit anyone from running. We do not, however, think that many will be inhibited by the filtered disclosure system which we propose, because the public disclosure will cover only the existence of financial interests and relationships and not their amounts or values. Indeed, we have heard it argued strenuously that those who will not run because of this kind of disclosure requirement will be counterbalanced by those who will be induced to run by a perception that politics is and is seen to be practised by people with high ethical standards. Both sides of this argument are largely speculative.

(c) Reasons for a public financial disclosure system

Given the objections we have mentioned, why should a system of disclosure of financial interests be established?

The theory behind a disclosure system is simple. First, it puts the financial interests of a minister or MLA upon a public record. Anyone can check that record to see whether or not, in fact, a minister or MLA has exercised his or her powers of office in a way which might benefit those interests. Because the facts can be checked, public confidence in the integrity of ministers and MLAs will be promoted.

There is a secondary advantage. Preparing a disclosure statement will periodically direct the mind of each minister and MLA towards the need to avoid conflicts of interests. It will also call to mind the interests which might cause conflicts. That makes it more likely that ministers and MLAs will perceive conflicts in time to take corrective steps.

In 1986, the Hon. John B. Aird Report, (see the Aird Report, Appendix 4) said this:

> My fundamental assumption has been that full public disclosure of all economic interests and relationships is the strongest weapon in the arsenal of any conflict of interest regime. It is both the necessary prerequisite for any informed evaluation of a Minister's conduct and the strongest disincentive to actions of an improper nature.

In 1989, in the United States, the President's Commission on Federal Ethics Law Reform, in its report *To Serve With Honour*, said

> "In the Commission's view, ten years of experience with the *Ethics in Government Act* requirements have demonstrated the value of public financial disclosure to the maintenance of

> public confidence in the integrity of the actions of government officials".

That Commission was dealing with appointed, rather than elected, officials, but the disclosure system which it referred to covers members of the House of Representatives as well.

We note that a financial disclosure system of the kind which we will recommend has been functioning in Ontario for nearly two years and appears to have been accepted by ministers and MLAs.

(d) The Review Panel's conclusions

We have concluded that the maintenance of public confidence in ministers and legislators requires a system of disclosure of financial interests. The purpose of the disclosure should be, so far as practicable, to enable the public, or any member of the public, to determine whether or not an action of a minister or MLA has benefited, or might have been expected to benefit, a private interest of the minister or MLA. The public disclosure which should be required is the disclosure necessary to achieve that purpose, no more and no less.

The disclosure system should minimize, as far as possible, the intrusion on the privacy of ministers and MLAs. However, the amount of intrusion which cannot be avoided must be accepted.

At the very least, the existing disclosure system cannot be dismantled. In the Review Panel's opinion, it should be extended to require ministers and MLAs to make complete disclosure of their financial interests to the Ethics Commissioner, including amounts and values, followed by a filtered public disclosure of the existence of financial relationships and interests, but not of amounts or values.

(e) Limits on the effectiveness of a disclosure system

A disclosure system can be successful only if ministers and MLAs are frank. A minister or MLA can thwart the system by simply not mentioning an interest, liability or source of income. A minister or MLA might go further and conceal property in the name of a business partner or trustee.

The Review Panel recognize this limitation but are not deterred by it. First, as we have said, we believe in the integrity of ministers and MLAs. Second, a minister or MLA who does not make complete disclosure will run a risk of being found out. Concealment will be necessary, and the price of exposure will be substantial.

It is also true that the public disclosure of an interest does not of itself prevent a minister or MLA from favouring that interest. It does, however, give the public a means of finding out about the conflict of interest, and the possibility that someone will check up is likely to inhibit a minister or MLA from acting when a conflict of interest exists.

(f) Proposed financial disclosure system

(i) Ministers and MLAs

We have said that both ministers and MLAs should be required to make disclosure of their financial interests. We now turn to the question whether the same disclosure requirements should apply to both.

At the present time, MLAs are required to disclose the names of persons "directly associated" with them, principally their spouses and private companies and partnerships in which they are interested. This results in the disclosure of Government money paid to each MLA and the persons directly associated with him or her. Ministers must in addition make disclosure of their own real estate and private company and partnership interests and those of their families.

There are obvious differences between the position of a minister and the position of an MLA who is not a minister. A minister has power to make specific decisions within the scope of his ministerial authority. A minister participates at the cabinet level in all the multifarious business of the Government. An MLA, acting as such, deals only with questions which come before the Legislative Assembly and its committees.

The economic interests of an MLA who is not a minister are therefore much less likely to come into conflict with his or her public duties than are the economic interests of a minister, and it is much easier for an MLA to recognize the occasional conflict which does inevitably occur than it is for a minister to recognize the whole implications of the business of the Government. It may therefore be argued that a minister should be required to make a very extensive disclosure and that an MLA should be required to make only a more limited disclosure.

Society, however, entrusts to MLAs the collective power to make laws, and MLAs, particularly but by no means exclusively MLAs of the governing party, necessarily have influence with the Government and over the conduct of the business of government. Society is entitled to have that power and influence exercised for public and not for private purposes. Public confidence in the integrity of MLAs is as important as public confidence in ministers and will be promoted by a public disclosure system. For these reasons, the Review Panel are of the opinion that MLAs should make the same public disclosure as do ministers.

(ii) Scope of disclosure

(A) Disclosure of financial interests to the public

What is disclosed to the public is the final product of a disclosure system. We will therefore discuss public disclosure first. We will then discuss a more complete confidential disclosure to the Ethics Commissioner, which will be the foundation for the public disclosure.

We have said that the purpose of the disclosure should be to enable the public, or any member of the public, to determine whether or not an action of a minister or MLA has benefited, or might have been expected to benefit, a private interest of the minister or MLA. The next question is: what public disclosure is required to achieve that purpose?

In order to determine whether a minister or MLA has favoured his or her private economic interests, the public must know what those interests are. They include property owned by the minister or MLA, including land, buildings, things, businesses, interests in corporations, and debts owed to him or her by individuals and corporations, including bonds and debentures. They also include sources of income, as a minister or MLA may have a financial interest in maintaining his or her income from them. They include liabilities, as a minister or MLA may have a financial interest in pleasing a creditor. The Review Panel therefore think that, as a general principle, a minister or MLA should make public disclosure of all of these interests.

However, the public does not need to know the amount or value of an asset or liability or the amount of income derived from an income source. It is the existence, and not the value or amount of an interest which may create a conflict between that interest and the public duty.

If the public does not need to know something, there is no justification for requiring a minister or MLA to disclose it to the public. The legitimate privacy interest of ministers and MLAs must then be recognized and respected.

The Review Panel's first recommendation is therefore that the public disclosure required of ministers and MLAs should be limited, in the usual case, to the existence of interests and should not include the amounts and values of interests.

There are some interests about which the public does not need to know at all. Some are so small that no reasonable person would assume that their existence would influence the actions of a minister or MLA; in the Review Panel's opinion, any financial interest or obligation less than $1000 would be in this category. Some are so personal that their values are unlikely to be affected by anything that ministers or MLAs do, such as cars, books, sporting equipment, works of art, and so on. Others, though economic, are unlikely by their nature to be affected by anything that ministers or MLAs do, for example, bank deposits and (in most cases) government bonds. Still others, though they might possibly be affected by what ministers and MLAs do, are unlikely to influence official decisions, for example, mutual funds, registered retirement savings plans administered entirely by trustees, and pension rights. In the Review Panel's opinion, interests of this kind should be excluded from public disclosure.

We recommended earlier that gifts and benefits received by a minister or MLA, or by a spouse or minor child, having a value of $200, and gifts and benefits from a single source having a value in excess of $200 in the course of a year, should be included in the minister's or MLA's public disclosure statement. These would be gifts received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office, as acceptance of other gifts related directly or indirectly to office would be prohibited.

(B) Payments to MLAs and directly associated persons

We have mentioned earlier the provisions in the *Legislative Assembly Act* which result in the publication annually of the amounts of money paid by the Government to MLAs and persons "directly associated" with them, being spouses and private companies and other business entities in which they have interests. The next question is whether this system should be continued.

We think it should. The information is useful to the public, and the prospect of its publication will cause MLAs to consider the appearance, as well as the possible disqualification, which Government payments to them or those directly associated persons will create.

Disclosure of financial interests and relationships will, without more, disclose the "directly associated" persons. However, as a matter of practice, the disclosure form should include an item covering them, and the information should go to the Provincial Treasurer, who should continue to issue the annual statements called for by the *Legislative Assembly Act*.

Section 24 of the *Legislative Assembly Act* excludes from the definition of "directly associated person", and therefore from the obligation of an MLA to disclose its name, a corporation the shares of which held by the MLA are publicly traded. We think that this exclusion should continue. The section also excludes a corporation the MLA's share in which are held in a blind trust. We will later in this report give reasons for thinking that a blind trust should be available only for publicly traded securities, and we therefore think that it should not be available under the proposed scheme.

Section 24 also excludes co-operatives and credit unions from the definition of "directly associated persons". That exclusion should continue.

(C) Disclosure to the Ethics Commissioner

We have now given our views about what financial information ministers and MLAs should disclose to the public. The conflicts of interests system could merely lay down the rules and leave ministers and MLAs to conform to them. We do not think, however, that this would be fair to ministers and MLAs or that it would ensure complete and accurate public disclosure. The probability of human error, such as that disclosed by the Aird Report (see Appendix 4), is simply too great.

We think that each minister and MLA should be required to make confidential disclosure to the Ethics Commissioner of all assets, liabilities and sources of income. We think that the Ethics Commissioner should review the information so disclosed and that, from it, he or she should prepare the public disclosure statement for the minister or MLA. Before making the statement public, the Ethics Commissioner should consult the minister or MLA and give consideration to anything that the latter has to say.

The Ethics Commissioner can ensure that the public disclosure statement tells the public what it needs to know. He or she can protect ministers and MLAs against the public disclosure of what the public does not need to know. It will often be a matter of judgment as to whether or not an interest falls within a category which must be disclosed. It will sometimes be a matter of judgment as to whether or not the amount of value of an interest is necessary for the public's information. The Ethics Commissioner can exercise that judgment and protect both the public and ministers and MLAs.

We therefore think that a system of confidential disclosure to the Ethics Commissioner followed by public disclosure along the lines we have suggested will be flexible and much more likely to avoid error. In particular,

(a) a minister or MLA is likely to give much closer attention to making full disclosure which is to be scrutinized and clarified by an important functionary than he or she is likely to give to merely filling out a form.

(b) the Ethics Commissioner will be able to see things that need to be explained, to ask questions and to get explanations.

(c) the Ethics Commissioner will be able to apply objective judgment to any doubtful questions and to make an impartial decision as to what should be disclosed.

(d) after a time, the Commissioner will be able to compare currently disclosed information with that previously disclosed and ask questions about any unexplained changes.

(e) the public, or at least the media and those who are interested in the subject, will know that the background information is being vetted by an independent and impartial functionary.

(g) Spouses

Up to this point, we have discussed the disclosure of the financial interests of ministers and MLAs. We now turn to the most troubling question about a financial disclosure system for ministers and MLAs: should the financial interests of the spouse of a minister or MLA have to be disclosed?

The spouse of a minister or MLA is not an extension or a subordinate part of the minister or MLA. A spouse is an independent person entitled to live an independent and private economic life. Unlike a minister or MLA, a spouse did not choose to run and did not accept office in the knowledge that financial disclosure would be required. Finally, if any form of disclosure of the financial interests of a spouse is required, pressure from spouses who want their interests to remain confidential may inhibit good candidates from running for office.

There is, however, another side to the question.

First, it is still common, though not without exception, for the financial affairs of husbands and wives to be intertwined to the extent that a financial benefit to an interest of one is a financial benefit to the other. This does not imply subordination of one to the other. It is a fact of married life.

Second, it is also still common, though also not without exception, for husbands and wives to be deeply attached to each other and to have a strong desire to promote each others' interests.

Third, under the *Matrimonial Property Act*, each spouse has a right, upon marriage breakdown, to share in the economic gains made by the other during marriage. While we do not suggest that ministers and MLAs base their conduct upon expectations of marriage breakdown, this circumstance does give each spouse an additional potential interest in the economic well-being of the other.

Fourth, one of the commonest ways for one spouse to conceal assets is to put them in the name of the other spouse.

Fifth, there is a strong public perception that the preceding four statements are true.

Having considered both sides of the case at length, the Review Panel are of the opinion that a financial disclosure system which did not call for any disclosure of the financial interests of the spouse of a minister or MLA would have a gap in it which would render it ineffectual in fact and insufficient to maintain public confidence in the integrity of ministers and MLAs. That is because the public would simply assume that ministers and MLAs who wished to avoid the application of the system had transferred assets to their spouses. These things being so, we have concluded that the public interest in maintaining public confidence in the integrity of ministers and MLAs overrides the privacy interest of their spouses to the extent required by the disclosure system which we propose. It follows from this that disclosure of the financial interests of spouses of ministers and MLAs should be made.

The next question is whether a minister's or MLA's public disclosure statement should include all the financial information about a spouse which it includes about the minister or MLA.

The Ontario statute provides two escape valves. First, it allows the Ontario Commissioner to except from the MLA's public disclosure statement a source of income "in respect of services that are customarily provided on a confidential basis". Second, it allows the Commissioner to exclude a source of income the disclosure of which would create a possibility of harm to the spouse's interests serious enough to justify a departure from the general principle of public disclosure.

The federal scheme seems to leave the Registrar, and ultimately the Conflict of Interests Commission, with a wide open discretion to publish spousal information or not to publish it after balancing the public interest in disclosure against the private interest of the spouse. Also, it is only spousal information "related directly to" the minister, MP or senator that will be included in the public disclosure statement. We do not understand the meaning or effect of this latter phrase.

The Ontario scheme seems to start with a presumption that the spouse's filtered financial information will be made public in the same way as the minister's or MLA's filtered financial information. This approach seems to us to be preferable. In the usual case, a spouse's financial position is important to understand, and a hardship exception should be sufficient protection for unusual cases.

That leaves open the question: who should make the disclosure of the spouse's financial interests to the Ethics Commissioner? In most cases, we expect that a minister's or MLA's spouse will agree to the kind of disclosure which we have proposed above, because a refusal to disclose will cause practical difficulties for the minister or MLA. However, the spouse may refuse.

The Ontario *Member's Conflict of Interest Act* copes with the problem by (a) requiring an MLA to provide financial information about his or her spouse, and (b) requiring the Commissioner to meet the MLA and the spouse if available. Federal Bill C-46 requires an MP or senator to file information about his or her spouse's financial interests. Both schemes therefore contemplate that a minister or member will provide information about his or her spouse's financial interests. Neither scheme requires the minister or member to investigate to determine what those interests are. Neither scheme imposes a duty of disclosure on the spouse.

We think that the federal and Ontario approach is right. In most cases, the minister or MLA will have enough knowledge to make adequate disclosure. If a minister or MLA does not have that knowledge, then adequate disclosure will not be made, but the other side of the coin is that the minister or MLA will have no reason to advance a spouse's interest if he or she does not know that the interest exists. This consideration presupposes honest disclosure by the minister or MLA, but, as we have indicated, we believe that ministers and MLAs will, in general, make honest disclosure.

We have so far referred to "spouses". We think that a minister's or MLA's disclosure obligation should extend not only to the interests of a legally married spouse, but also to the interests of someone with whom the minister or MLA is living in a conjugal relationship outside marriage. On the other hand, we do not think that the obligation should extend to the interests of a spouse with whom a minister or MLA has entered into a separation agreement, nor do we think that it should apply if the support obligations and matrimonial property of a minister or MLA and his or her spouse have been dealt with by a court.

(h) Children and other family members

A father or mother, as a rule, has a strong motivation to favour a child. It can be argued that the financial interests of the children of ministers and MLAs can create conflicts of interests for the ministers and MLAs and should therefore be included in the financial disclosure system. The Review Panel accept the argument.

It would, in the Review Panel's opinion, be going too far to require disclosure of the financial interests of any family member other than a spouse or minor child merely because of the family relationship. However, a benefit to a minor child is likely to be a benefit to a minister or MLA, and the Review Panel therefore thinks that ministers and MLAs should be required to make disclosure of the financial interests of their minor children.

(i) Private companies

It is obvious that, in the usual case, a benefit to a corporation in which an individual has an interest is a benefit to the individual's interest. It is not practicable to ask for disclosure of the interests of public or distributing companies. We think, however, that ministers and MLAs should be asked to disclose the interests of private or non-distributing companies in which they, their spouses and children, have interests. Such a requirement could result in some invasion of the privacy of other shareholders in such a company, but we think that that has to be accepted in view of the importance of the public interest in adequate disclosure.

It may be that in a particular case a minister or MLA will not be able to obtain complete information about the interests of such a company. In that event, the minister or MLA should disclose whatever information is available. Complete disclosure is preferable, but interests of which the minister or MLA does not know will not affect his or her conduct.

The public disclosure statement of the minister or MLA should include information about the interests of such a company to the same extent as it includes information about the interests of the minister or MLA.

(j) Formal Recommendations

Recommendation 9

The Review Panel recommend:

(a) that ministers and MLAs should be required to make public disclosure of the financial interests of themselves, their spouses and minor children, and of private or non-distributing companies in which they, their spouses and minor children, hold interests;

(b) that the same requirements should apply to both ministers and MLAs;

(c) that the public disclosure should include

  (i) disclosure of all assets, liabilities and sources of income, but not, unless the Ethics Commissioner decides that the public interest requires it, disclosure of values or amounts of assets, liabilities and sources of income, and

  (ii) disclosure of gifts or personal benefits by a minister or MLA or by his spouse or minor children received as an incident of protocol or of the social obligations that normally accompany the responsibilities of the office of the minister or MLA, which exceed $200 from one source in any twelve month period and are retained with the approval of the Ethics Commissioner.

(d) that the following should not have to be included in the public disclosure:

  (i) assets, liabilities and interests having individual values of $1000 or less,

  (ii) sources of income of less than $1000 per year,

  (iii) information identifying a home or recreational property occupied by the minister or MLA or his or her family,

  (iv) things used personally by a minister, MLA, or his or their family,

  (v) amounts or values of assets, liabilities and interests, unless the Ethics Commissioner, for special reason, thinks an amount or value should be included,

(vi) publicly traded securities and similar assets which are in a blind trust which meets the requirements of Recommendation 14,

(vii) unpaid taxes and support obligations;

(e) that ministers and MLAs should make to the Ethics Commissioner, upon election or appointment and annually and upon material changes thereafter, full disclosure of all assets, liabilities and sources of income, including those exempted from public disclosure but excepting things used personally by them and their families;

(f) that the Ethics Commissioner should be required to prepare and file with the Clerk of the Legislative Assembly, after consultation with the minister or MLA, and his or her spouse, if available, a public disclosure statement for each minister and MLA which will provide the information required under (c) above;

(g) that each minister and MLA should be required to disclose as a separate item the names of his or her spouse and minor children, corporations of which the minister or MLA is a director or senior officer, corporations in which the minister or MLA holds shares (other than co-operatives and credit unions, and not if the shares are publicly-traded shares), partnerships of less than 20 partners in which the minister or MLA or a corporation referred to above is a partner, and persons or groups of persons who are agents of the minister or MLA;

(h) that the Provincial Treasurer should after the end of each year publish a statement of money paid by the Government to each minister and MLA and the persons directly associated with the minister or MLA under clause (g), as is done now under the *Legislative Assembly Act*;

(i) that each minister and MLA should be required to disclose to the Ethics Commissioner, to the extent that he or she knows it, the same information about his or her spouse's financial interests as the minister or MLA is required to disclose about his or her own financial interests;

(j) that the Ethics Commissioner should include in the minister's or MLA's public disclosure statement the same information about the minister's or MLA's spouse as the minister's or MLA's public disclosure statement will include abut the minister or MLA, though the Ethics Commissioner should have a discretion to exclude spousal information which will cause special hardship to a spouse unless disclosure is clearly required by the public interest;

(k) that where a minister or MLA has entered into a separation agreement with his or her spouse, or if their matrimonial property and support obligations have been dealt with by a court, the disclosure obligations relating to the spouse's financial interests should not apply;

(l) that the recommendations made with respect to a spouse should apply to a person with whom a minister or MLA is living with in a conjugal relationship outside marriage.

(m) that the Ethics Commissioner should report periodically to the Legislature the names of ministers and MLAs who have made proper disclosure and the names of those who have not.

(See draft legislation, sections 34-35.4)

(4) ECONOMIC ACTIVITIES OF MINISTERS AND MLAS

(a) Alberta Energy Company shares and other public policy vehicles

(i) Section 31 of the *Alberta Energy Company Act*

The Review Panel's terms of reference direct us "to review in particular the ownership by Members of the Executive Council, Members of the Legislative Assembly and senior public servants of shares of the Alberta Energy Company Ltd." We now turn briefly to that subject in relation to ministers and MLAs.

The Premiers' guidelines prohibit ministers from owning shares in public companies the interests of which might be affected by decisions of the Government (unless they are put into trusts not controlled by the ministers). Alberta Energy Company Ltd. is such a company.

Standing Order 33 of the Legislature prohibits MLAs from voting on matters in which they have direct pecuniary interests. If this is not broad enough to cover matters which may increase the value of MLAs' investments, it should do so.

Section 31 of the *Alberta Energy Company Act*, however, provides that "the right of a member of the Legislative Assembly to participate in any debate or to vote on any question relating to any matter affecting the [Alberta Energy] Company is not affected by the fact that any voting shares of the Company are held in the name or right of or for the use or benefit of the member". It appears that this has been interpreted as applying to ministers in their capacities as ministers as well as to MLAs acting in that capacity.

It is not part of the Review Panel's function to review the reasons for the enactment of section 31. Our terms of reference do, however, require us to consider whether it should be retained for the future.

No brief gave a reason for retaining the section. None of the Legislative Assembly caucuses suggested that it be retained. The Review Panel cannot think of a reason to retain it. If retained, it would run counter to the recommendations which we have made earier in this report. In our opinion, it should be repealed.

(ii) Ownership of shares in companies which are vehicles of provincial policy

So far as the recommendations which we have made to this point are concerned, the repeal of section 31 of the *Alberta Energy Company Act*, without more, would leave MLAs free to own Alberta Energy Company shares. An MLA who owned shares would merely have to disqualify himself when any matter affecting Alberta Energy Company's interests comes before the Legislative Assembly or one of its committees.

It was suggested to the Review Panel that MLAs should not be able to own shares in Alberta Energy Company because its special relationship to the Government as an instrument of the public policy of the Government gives rise to an undue risk of conflicts of interests among MLAs. The suggestion is actually somewhat broader: that MLAs should not be able to own shares in any company which has a similar relationship to the Government.

There are at least two other companies which would have, at some time or another fallen into the same class. These are Nova and Pacific Western Airlines. We have not thought it necessary to investigate the ownership of the three companies, and, if the Government still has an interest in them, the suggestion would apply to them. It might also apply to a third company, Vencap, because of money advanced by the Government to that company.

After much thought, the Review Panel have concluded that MLAs should not be prohibited from owning shares or other securities of Alberta Energy Company Ltd. or in other companies which have a similar relationship with the Government. In our opinion, it is enough that MLAs who do own such securities must disqualify themselves from dealing with matters relating to such companies.

The situation might be different with ministers. However, the question of ownership of shares in such companies by ministers does not arise, because we will recommend later in this report that ministers continue to be prohibited from owning securities in public companies whose interests might be affected by Government decisions.

(b) Government contracts and payments

Sections 27, 28 and 29 of the *Legislative Assembly Act* provide that upon the occurrence of one of a number of events an MLA is disqualified from membership in the Legislature. These sections are reproduced in Appendix 3, and we will therefore give only a brief and general description of them here.

Under section 27, various kinds of federal and provincial Crown employment are grounds for disqualification. Under section 28, a contract between the Crown and an MLA or a directly associated person is grounds for disqualification. Under Section 29 various kinds of payments from the Crown to an MLA or a directly associated person are grounds. The provisions are designed to avoid disqualification if a contract does not involve preferential treatment or if a payment is one to which everyone, or a class of the public, is entitled.

Sections 27, 18 and 29 say that the MLA is disqualified. They do not mean it. Section 32 provides that the MLA is not disqualified until the Court of Queen's Bench has found that he is disqualified and the Legislative Assembly has declared him disqualified, and section 33, while its interpretation is somewhat doubtful, appears to reverse the disqualification of an MLA who obtains and carries out the directions of the Court of Queen's Bench for the removal of the cause of disqualification. Presumably the sections were framed in this way so as to relieve against the harshness of the pre-1983 Act, under which an MLA might be automatically disqualified by a minor oversight, such as receiving a small amount of money as compensation for an expropriated interest.

In the Review Panel's opinion, sections 27, 28 and 29 should, in principle, be carried forward. We think that the following changes should be made:

(a) the language should be changed so that the law will say that the various events will be grounds for disqualification rather than that they bring about disqualification. This would be a largely cosmetic change.

(b) the law should then say that, if there is an allegation that one of the events has occurred, the allegation will go to the Ethics Commissioner and the Legislative Assembly under the investigation, report, and recommendation procedure which we will recommend later in this report.

(c) the sections should not allow an MLA to put shares into a blind trust and thus remove the company which issues them from the category of "directly associated persons" whose activities may disqualify the MLA. The reason is that the present provision which authorizes the blind trust applies only to companies whose shares are not publicly traded, and we will later in this report recommend that divestment through a blind trust should not be permitted for such shares.

(c) Special provisions applicable to ministers

(i) Shares in public or distributing companies

The present Premiers' guidelines (see Appendix 3) provide that ministers should not hold shares in a public company whose business might be materially affected by the the decisions of the Government. They do, however, give ministers the option of putting such shares into a trust over which the minister has no influence. Although the guidelines do not require the trust to be a "blind" trust, we understand that the practice has been to act as if they did so.

The present federal *Conflict of Interest and Post-Employment Code for Public Office Holders* requires ministers and senior public servants to divest themselves of publicly traded securities of corporations and foreign governments. Federal Bill C-46 appears to confer a discretion upon the proposed Conflict of Interests Commission to require an MP, including a minister, to divest himself or herself of anything that will conflict with the statutory duty to arrange personal affairs so as to avoid conflicts of interests. On the other hand, the Ontario statute does not impose any such requirement of divestiture of publicly traded securities.

In the opinion of the Review Panel, the requirement in the Premiers' guidelines is useful because it will help to minimize the number of conflicts of interests which occur and will help to maintain public confidence in the integrity of ministers. In order to accomplish its purpose, however, we think that the prohibition should extend to the ownership of publicly traded securities and not merely publicly traded shares.

We are not aware that ministers have had any difficulty in determining whether companies fall into the category of companies whose interests might be affected by decisions of the Government. Such a difficulty might, however, arise. While the simplest course of action for a minister in a doubtful case would be to get rid of the securities, we think that the Ethics Commissioner should have power to give an authoritative ruling. A favourable ruling would justify the holding of the securities. The minister would still be under a duty to disqualify himself or herself from exercising any powers of office which might affect interests of the company which had issued the securities, but the incidence of conflicts would be reduced.

If a minister owns shares or other securities when he or she assumes office, and if divestiture would create a problem for the minister, it would be unfair to require immediate divestiture. We think that the Ethics Commissioner should have power to defer it until the requirement is fair to the minister.

We have used the term "public company". Terminology having changed in some respects since the original guidelines were promulgated by Premier Lougheed, it would probably be better to refer to "distributing corporations and public companies" to cover both usages.

For reasons which we will give later in this report, the Review Panel think that putting the securities in a truly blind trust, but no other kind of trust, should be an optional alternative to getting rid of the securities entirely. The terms of the trust should be subject to the approval of the Ethics Commissioner.

(ii) Businesses, professions and employment

One brief received by the Review Panel suggested that ministers should be prohibited from carrying on any business other than a family farm. Another referred the Review Panel to the Ontario *Members' Conflict of Interest Act*, which prohibits ministers from engaging in employment, professions and businesses "except as required or permitted by the responsibilities of being a member of the Executive Council".

The Review Panel do not think that every employment which a minister might take and every profession or business which a minister might carry on puts the minister into a position in which his interest and duty may conflict. Certainly, in this province, we do not think that it would be appropriate to say that a minister must turn over the operation of a farm to trustees or divest himself or herself of it. We do not recommend a total ban on employment, professional practise and carrying on business.

Obviously, ministerial duties are demanding. Outside affairs may well take time and energy which a minister should expend on those duties. We do not think, however, that a conflicts of interests system has the function of keeping a minister at his or her desk. That seems to us to be something for ministers and, if necessary, the Premier, to consider.

We do think that ministers ought to avoid activities which are likely to result in conflicts of interests or to create the appearance of conflicts. We think that the law should say so. We do not think that it should go further. We think also that in a case of doubt, a minister should be able to obtain a ruling from the Ethics Commissioner as to whether or not a proposed activity would be so likely to create the fact or appearance of conflicts that the minister should not engage in it. The Ethics Commissioner should be able to prescribe conditions which will protect the public interest.

The Ontario statute goes on to say that a minister may comply with the prohibition against carrying on some businesses by entrusting a business to a trustee. The trust would not be "blind", so that if a conflict were to arise between the interests of the business and the interests of the Government, the minister would still have to disqualify himself or herself. However, the trustee would have to act at arm's length and make all decisions, and the trust would have to be approved by the Conflict of Interest Commissioner.

The Ontario trust provision presupposes that a minister is carrying on a business which is not "permitted by the responsibilities of being a member of the Executive Council". At that point, putting in other management might be a viable alternative. The Review Panel do not, however, see that it would be useful for Alberta law to prescribe one kind of legal structure for that management. It seems to us best to leave the decision to the minister, with a proviso that a minister may comply with the provision by obtaining the approval of the Ethics Commissioner to the way in which the activity is to be carried on. We do not recommend that the law specifically provide for the putting of a minister's business into a trust.

(d) Formal Recommendations

Recommendation 10

The Review Panel recommend that section 31 of the *Alberta Energy Act* be repealed.

Recommendation 11

The Review Panel recommend:

(a) that the principles of sections 27, 28 and 29 of the *Legislative Assembly Act* dealing with Crown employment, Crown contracts and Crown payments, should be carried forward into the proposed conflicts of interests system.

(b) that the language of the Act should be changed so that the law will say that an event of the kinds mentioned in sections 27, 28 and 29 would be grounds for disqualification rather than saying that the event disqualifies the MLA.

(c) that an allegation that one of the events referred to in sections 27, 28 and 29 has occurred should go to the Ethics Commissioner and be dealt with by the investigation, hearing and reporting procedures the adoption of which we will recommend later in this report.

(d) that the successor provisions to sections 27, 28 and 29 should not allow the use of a blind trust.

(See draft legislation, sections 35.5-35.10)

Recommendation 12

The Review Panel recommend:

(a) that ministers should be prohibited from owning shares in or other securities issued by public companies or distributing corporations the interests of which might be affected by decisions of the Government.

(b) that the Ethics Commissioner should have power to dispense with the requirement of divestiture of securities under (a) until such time as the requirement seems fair.

(c) that the Ethics Commissioner should have power to rule on whether or not a company falls into the category described in (a).

(d) that putting the securities into a blind trust which meets the requirements of Recommendation 13 should be an alternative option to disposing of securities.

(See draft legislation, section 35.11)

Recommendation 13

The Review Panel recommend:

(a) that ministers should be prohibited from engaging in employment or the practice of a profession, carrying on a business, or holding an office or directorship other than in a social club, religious organization or political party, which is likely to conflict or appear to conflict with the responsibilities of ministerial office.

(b) that a minister should be able to obtain the approval of the Ethics Commissioner to the way in which employment, the practice of a profession, a business, or office or directorship, will be, carried on.

(See draft legislation, section 35.12)

(5) TRUSTS AS AN ALTERNATIVE TO DISCLOSURE AND DIVESTITURE

(a) "Blind" trusts

(i) The Review Panel's views

We have referred to sections 27, 28 and 29 of the *Legislative Assembly Act*. Under those sections, if an MLA puts company shares into a blind trust, the company is no longer a "directly associated person" whose contracts with or payments from the Government can disqualify an MLA from office.

We have also referred to the requirement under section 31 of the *Legislative Assembly Act* that MLAs make public disclosure of the names of "persons directly associated" with them. These include companies, other than those whose shares are publicly traded, in which MLAs hold shares. Putting the shares into a blind trust can also avoid that requirement. In cases under sections 27, 28, 29 and 31, we have recommended that the right to use a blind trust be abolished.

We have also referred to the Premiers' guidelines under which ministers are precluded from holding shares in a public company the interests of which might be affected by decisions of the Government. There we have recommended that the use of the blind trust be continued.

At those points in the report, we deferred discussing the blind trust. We now turn to a general discussion of blind and other trust arrangements and when they might be useful.

The blind trust is treated as a form of divestiture. If it is used, a minister or MLA need not divest himself or herself of assets, but is freed of the conflicts of interests consequences of owning them.

The first question is whether the blind trust should be abolished in Alberta, and, if not, under what circumstances, for what purposes, and for what assets it should continue to be available.

Under a blind trust, a minister or MLA transfers assets to a trustee. The trustee has power to manage the assets. This includes the power to sell any or all of them and the power to buy substitute assets. The minister or MLA has no control over what the trustee does. The minister or MLA should not know what assets the trustee has sold or bought. The minister or MLA therefore should not know what assets are in the trust, at least after enough time has elapsed that some transactions are likely to have taken place.

The theory of the blind trust, then, is that the minister or MLA who creates it will not know what assets are in it. A minister or MLA cannot use his or her powers to advance an interest of the existence of which he or she is ignorant. The use of the blind trust thus prevents the use of public powers for private benefit and achieves the first objective of a conflicts of interests system.

The fact that ministers and MLAs do not know what is in their blind trusts gives the public the necessary assurance that the ministers are not using the powers of their offices to advance their private interests. This achieves the second objective of a conflicts of interests system, which is to maintain public confidence in the integrity of ministers and MLAs.

That is the theory. Blind trusts have, however, acquired a bad name. One reason is that it is natural to suspect that the minister or MLA does know what assets are in the blind trust, or, as it has been said, that the trust is not blind. The Hon. W.D. Parker, in the Parker Report which is reviewed in Appendix 4, recommended that the blind trust be abolished. Representations to the Review Panel have made the same recommendation. What should be done?

One problem with the blind trusts has been the kinds of assets put into them. A minister or MLA who puts a private business into a blind trust will know very well that the business is not likely to be sold. He or she may very well know that a sale cannot have taken place without his or her knowledge. However, if publicly traded securities are put into a blind trust under trustees whose duty it is to manage the investment portfolio to achieve the best economic return, and if the trustees do not tell the minister or MLA about the purchase or sale of assets, the minister or MLA cannot know what the assets are at any given time.

Another problem with blind trusts has been administrative. In some cases, trustees have been appointed who are not at arm's length from the minister or MLA. In others, precautions to avoid communication by the trustee to the minister or MLA of what is in the trust have not been sufficient. However, if properly qualified independent trustees are required and strict rules imposed, this problem can also be solved.

The Review Panel think that there is a place for the blind trust, albeit a restricted one.

First, the blind trust should be available only for investment-type assets which are likely to be traded. The only kind of asset which occurs to the Review Panel is a publicly traded security, but it is possible that there might be another.

Second, the blind trust should have to be administered by investment-type trustees, and there should be a strict prohibition against any communication which would let the minister or MLA know what is in the blind trust.

Third, the trustee, the assets initially committed to the trust, and the terms of the trust should be subject to the approval of the Ethics Commissioner, whose function would be to see that the public interest is protected and that the trust is truly a blind trust.

If the assets and the arrangements satisfy these requirements, the Review Panel see no harm in the use of a blind trust as an alternative to public disclosure and as an alternative to divestiture. If we are right that there is no harm in it, it follows that refusing the right to use it is not justified.

It would follow that a minister who has complied with the conditions would be relieved of the prohibition against owning securities which are bought and sold on a market; a minister or MLA would be relieved of the requirement of declaring an interest and abstaining from taking part in proceedings affecting a company's interests because the minister or MLA would not know that he or she had an interest in the company; and a minister or MLA would be relieved of the obligation to disclose the ownership of the securities either to the Commissioner or to the public.

The Review Panel think that it should be clear that there is no compulsion upon a minister or MLA to use a blind trust. No one should be compelled to entrust what may be a significant part of one's life's savings to an outsider. We mention this because we were told by a former minister that he had been told that his assets had to go into a blind trust (though they seemed to us to fall outside the requirements of the

Premiers' guidelines or of any rational requirement for divestiture), and, due to unfortunate investments, they declined substantially in value.

A blind trust would not be available to MLAs under the successor provisions to disqualification provisions of sections 27, 28 and 29 of the *Legislative Assembly Act* or under the requirement under section 31 of the disclosure of "directly related persons". This is because the blind trust should, on the Review Panel's recommendations, be available only for publicly traded securities, and the holding of publicly traded securities would not disqualify an MLA from office under sections 27, 28 and 29 or have to be disclosed under section 31.

(ii) Formal Recommendations

Recommendation 14

The Review Panel recommend:

(a) that the law should permit a minister or MLA to create a blind trust for publicly traded securities and similar assets approved for inclusion in the trust by the Ethics Commissioner.

(b) that the blind trust must be under the administration of a trustee who or which is

  (i) engaged in the business of managing investments for other persons, and

  (ii) approved as trustee by the Ethics Commissioner upon being satisfied that there is no relationship between the minister or MLA and the trustee which would or would appear to affect the discharge of the trustee's duties;

(c) that the terms of the trust, in the opinion of the Ethics Commissioner,

  (i) give the trustee sole power over investment decisions, and

  (ii) preclude the minister or MLA from having any knowledge of the specific assets in the trust at any time after a deposit of assets in the trust.

(See draft legislation, sections 21.1(5),
35(a)(ii), 35.11(2)

(b) Trusts other than "blind" trusts

We now turn to a discussion of trusts under which a minister or MLA is not precluded from knowing what assets are in the trust but the minister is precluded from managing the assets.

A non-blind trust may do two things. First, it may prevent a minister or MLA from taking advantage of inside information which would suggest that an asset should be sold, or that, if the asset in the trust is a business, there is an opportunity which the business might exploit. Second, it may prevent a minister from being distracted from his ministerial duties by outside activities, if that is considered a proper objective of a conflicts of interests system.

However, a non-blind trust will not do anything to prevent conflicts of interests arising, and it will not do anything to relieve the actual or apparent influence which the minister's or MLA's private interests will have on his or her official actions. If a conflict arises between the public duty of a minister or MLA and an interest under a non-blind trust, the minister or MLA must still disqualify himself or herself from acting.

It is possible that an unforeseen case may arise in which a non-blind trust will serve a useful purpose. If so, it could probably be adopted under a discretionary dispensing power of the Ethics Commissioner. We do not recommend that the conflicts of interests system make any provision for such a device.

(6) INFORMATION AND ADVICE

(a) Need for information and advice

We reiterate our opinion that ministers and MLAs are ethical and are anxious to do their duty. They do not set out to do something wrong or to abuse their positions. If these generalities are subject to occasional exceptions, that is true about all generalities about people or about any class of people.

In the past, ministers and MLAs could be left to decide what their duties were and to carry out those duties. However, as we have already said, that is no longer enough. The times are more complex. The public is more watchful and critical, and it makes more stringent demands that ministers and MLAs not only conduct themselves properly but avoid the appearance of impropriety. These demands must be met.

Changing public attitudes and increasingsly complex times make it increasingly difficult for ministers and MLAs to know what their ethical duties are. Conduct that was accepted yesterday is not accepted today. An elected official can -- and some do -- stumble inadvertently into situations in which interest conflicts with duty or in which it appears to do so.

In the opinion of the Review Panel, two forms of assistance should be provided for ministers and MLAs. One is better general information about how to perform their ethical duties. The second is authoritative advice about how to act in specific circumstances.

(b) Providing general information and advice

The Review Panel think that written materials should be made available to ministers and MLAs outlining their ethical duties and the pitfalls into which they may fall if they do not pay enough attention to those duties. Oral presentations or seminars should also be made available. While party caucuses now make some efforts to make information along these lines available to MLAs, it is the Review Panel's opinion that more should be done.

California, the Review Panel is told, is considering legislation which would make it compulsory for elected officials to attend annual seminars. This, in the Review Panel's opinion, would be going too far.

In the Review Panel's opinion, party caucuses are an appropriate vehicle for providing information about ministers' and MLA's ethical duties. Further, it would, in the Review Panel's opinion, be appropriate for the Ethics Commissioner to commission the preparation of written materials on the subject, and also to promote understanding of ministers' and MLAs' duties at his interviews with them and by making himself available to address the caucuses on the subject. We do not suggest that the Ethics Commissioner should try to become a professional educator.

(c) Specific advice about future conduct

Ethical decisions are often difficult. Cases often fall into an ethical area which is grey rather than black and white. Ministers and MLAs frequently face such difficulties. Their difficulties are compounded by the need to preserve the appearance as well as the fact of ethical conduct. Their difficulties are further compounded by the fact that a decision made in good faith may be second-guessed later, with serious or even disastrous consequences for the career of the one who makes it.

At present, an Alberta minister or MLA can seek legal and ethical advice from Parliamentary Counsel. Giving such advice is a valuable function which is discharged with distinction. Parliamentary Counsel should continue to perform it.

However, the Review Panel think that something further is necessary. Acting on Parliamentary Counsel's advice, or the advice of any lawyer, will not prevent later charges of breaches of conflicts of interests rules. A minister or MLA should be able to obtain advice which is authoritative in the sense that one who who acts upon it will be protected from later charges of a breach of conflicts of interests rules.

An MLA, including a minister, has an additional way of obtaining advice. Under section 33 of the *Legislative Assembly Act*, he or she may apply to the Court of Queen's Bench for advice as to whether a contract with the Government or a payment from it will disqualify him or her. As we have already said, this is a procedure which is right in principle, but, because of the cost, delay and publicity associated with court applications, is not a practical answer to the problem.

A simple solution would be to provide that a minister or MLA who, after disclosure of all relevant facts, obtains and acts upon the advice of Parliamentary Counsel, is protected from charges of breaches of ethical duties. Given the system which we propose, however, we think that it would be better for the function to be performed by the Ethics Commissioner. Our reasons are as follows:

(a) We think that the relationship of lawyer and client should be preserved between Parliamentary Counsel, on the one hand, and ministers and MLAs on the other. If advice is to be authoritative, it must take the public interest into account, and to make Parliamentary Counsel an official charged with maintaining a public interest separate from the individual's interest would, we think, intefere with the lawyer and client relationship. Parliamentary Counsel no doubt considers the whole situation when giving advice, but that is a different proposition.

(b) We think that, assuming that the system which this report recommends or something like it, is established, the function of giving authoritative advice fits into and is part of that system. It is the Ethics Commissioner who will be the custodian of the financial information which will often be important to the validity of the advice, and it is the Ethics Commissioner who will have the general responsibility of fleshing out the general wording of the proposed statute and fitting it to particular cases. The giving of appropriate advice as to what is required by the public interest, and the limits of what is required, is an associated function which flows from the other functions proposed for the Ethics Commissioner.

For all these reasons, the Review Panel think that a minister or MLA should be entitled to request that the Ethics Commissioner give an opinion and recommendations on any matter respecting the obligations of the minister or MLA under the conflicts of interests system.

A similar opinion given by the proposed Conflict of Interests Commission under federal Bill C-47 will not bind the Commission. The Ontario *Members' Conflict of Interest Act* does not say whether or not an opinion by the Conflict of Interest Commissioner will bind the Commissioner. We think that an minister or MLA who acts on official advice from the Ethics Commissioner should be protected from proceedings under the conflicts of interests system. The whole purpose of the operation should be to enable a minister or MLA to obtain an impartial statement of his duty, and then to protect him when he carries it out.

There is no need, in the Review Panel's opinion, to make public every application to the Ethics Commissioner for authoritative advice. The advice so given should be confidential to the minister or MLA and should not be disclosed to anyone else except by or with the consent of the minister or MLA. It is only if a question is afterwards raised that the giving of the opinion is relevant, and the Review Panel thinks that it should be for the minister or MLA to raise the advice or not, as he or she wishes. It is no doubt possible that a minister or MLA will obtain the advice, act in contravention of it, and conceal the fact that it was given, but that possibility does not outweigh the advantages of confidentiality. We will meet it to some extent by our later recommendation that the Ethics Commissioner, if he or she has reason to believe that that is happening, will be able to institute an investigation.

In the Review Panel's opinion, the Ethics Commissioner, in giving advice, should not be restricted to saying whether or not proposed conduct is within the letter of the law. The Ethics Commissioner should be able to say whether or not it is in accordance with the ethical spirit of the law, and whether or not it will lead to an appearance of conflict of interest.

It is, of course, obvious that the minister or MLA who acts upon the Ethics Commissioner's advice should be protected only if he or she has disclosed to the Commissioner all the facts which are material to the Commissioner's decision. The Commissioner's advice should therefore be given in writing, and the facts should be either stated in his advice or stated in the application for advice and referred to in the advice. It may be that practicalities upon occasion will call for giving advice upon oral application, but in that event the advice and the facts upon which it is based should be put into writing as soon as possible.

The Review Panel therefore recommends that a minister or MLA be entitled to obtain the advice of the Ethics Commissioner as to whether or not proposed conduct will be in breach of the letter or the spirit of the proposed legislation, and that a minister or MLA who acts on advice obtained after proper disclosure of the facts should be entitled to rely on it. The advice should be confidential unless it is disclosed by or with the consent of the minister or MLA.

There are two possible problems with this advice procedure:

(a) the Ethics Commissioner, being human, may give advice in a particular case which is afterwards perceived to be wrong. We think that the public interest will nevertheless be served. The advice is likely to be right. If it is not, it will still be clear that the minister or MLA was trying to do his or her duty, and the public confidence in the political process will be preserved.

(b) the minister or MLA may not disclose the facts correctly. We would expect the Ethics Commissioner to try to assure himself or herself by discussion that there is no inadvertent error. However, the responsibility for disclosing all the facts which are material to the decision will rest squarely on the minister or MLA. If the disclosure is incomplete or inaccurate, the advice will not give any protection against proceedings under the proposed legislation, or will at best be a circumstance to be considered in any such proceedings.

It is our hope and expectation that ministers and MLAs will perceive this procedure as beneficial and will avail themselves of it in enough cases to make it worth while.

(d) Comments received

Everyone with whom the Review Panel discussed the subject agreed that it is desirable that better information be made available to ministers and MLAs about their duties under the conflicts of interests system. No one thought that any form of compulsory education should be required.

There was also general agreement that it would be useful and helpful for ministers and MLAs to be able to obtain authoritative advice as to whether a proposed course of action would constitute a breach of duties under the proposed legislation.

(e) Formal Recommendations

Recommendation 15

The Review Panel recommends:

(a) that the party caucuses turn their attention to providing MLAs, including ministers, with written information and seminars about their ethical duties and the pitfalls into which they may fall.

(b) that the Ethics Commissioner promote the informational process by

  (i) personal contact with MLAs and ministers, through interviews about their disclosure statements and otherwise;

  (ii) commissioning the preparation of written information about the ethical duties of ministers and MLAs;

(iii) continuing contact with the party caucuses and advising them as to what programmes they could usefully institute.

(See draft legislation section 35.13
as to part (b) only)

Recommendation 16

The Review Panel recommends:

(a) that a minister or MLA should be entitled to request from the Ethics Commissioner an opinion and recommendations on any matter respecting the legal and ethical duties of the minister or MLA under the conflicts of interests sytem.

(b) that the Ethics Commissioner should have power to give such an opinion and recommendations.

(c) that such an opinion and recommendations and the fact that they have been requested should be confidential unless the minister or MLA discloses them or consents to disclosure.

(d) that if the minister or MLA has properly disclosed the material facts and acts upon the advice and directions of the Ethics Commissioner, the minister or MLA should not be subject to further proceedings under the conflicts of interests system based upon the facts disclosed.

(See draft legislation, section 35.14)

(7) INVESTIGATION, REPORT AND SANCTION

(a) Present situation

The Legislative Assembly has power to discipline its members. This is the general law, and it is what sections 8 to 12 and 36 of the *Legislative Assembly Act* say. The Assembly can impose fines, imprisonment, suspension and expulsion. Where an MLA has become involved in a disqualifying Crown employment, Crown contract or Crown payment, the Court of Queen's Bench has power to make a finding of disqualification, but it is still for the Assembly to make the final decision.

The Premiers' guidelines requiring financial disclosure or divestiture by ministers are not law and contain no sanctions. However, under usual circumstances, the Premier can bring about the removal of a minister from ministerial office, and he or she will be under pressure to do so if it should appear that a minister has failed to make proper disclosure or has become involved in a conflict of interest. The guidelines are therefore not without effect.

A minister or MLA who commits a crime is, of course, subject to the criminal process and to adjudication and determination of sanctions by the courts. That is outside the scope of this report. The discussion here is about breaches of the conflicts of interests system which we propose.

(b) Sanctions for the conflicts of interests system

We turn to the question whether or not the law should provide a system for dealing with breaches by ministers and MLAs of their duties under the conflicts of interests system.

We point out two things. One is that nothing in our recommendations will affect the Premier's power to bring about the removal or demotion of a minister or the Premier's consequent power to supervise the conduct of ministers. The second is that nothing in our recommendations will affect the Legislative Assembly's general power to discipline its members. We are concerned with the establishment of a special procedure for dealing with allegations of breaches of duty under the conflicts of interests system which we propose.

There are three practical possibilities. The first is to leave the electorate to enforce the rules at the polls. The second is to give the courts power to impose sanctions. The third is to leave it to the Legislative Assembly to decide whether sanctions should be imposed and what they should be.

Leaving it to the electorate would mean that an MLA who breaches conflicts of interests rules would be left to face his or her individual electorate and that governments and political parties which do not clean their own houses would be left to face provincial electorates. Arguments have been made to us that various aspects of the conflicts of interests system should be left to the judgment of the electorate.

We think, however, that more is needed. Public confidence in the integrity of government will not be maintained if ministers and MLAs who transgress the system are left to the doubtful punishment of the next election. The law should provide a system for imposing sanctions.

The courts oversee the enforcement of law. They decide when breaches have occurred. They prescribe sanctions. They could do the same for contraventions of the conflicts of interests system. This would be quite workable. We do not, however, recommend it because we think that there is a more appropriate answer.

History and tradition strongly support the continuation of the power of the Legislative Assembly to discipline its members. The place and function of the Assembly in our constitution support it more strongly. The Assembly is elected by the people and is the principal component of the supreme lawmaker in the province within the area of provincial legislative jurisdiction. It should, in our opinion, have the ultimate power over the discipline of its members and the protection of their independence. It is therefore our view that it should be for the Assembly to make final decisions and to impose sanctions for breaches of duties and responsibilities under the conflicts of interests system.

However, allegations that ministers or MLAs have breached their duties under the conflicts of interests system should be investigated in a calm, careful, orderly and objective manner. Ministers and MLAs should have fair hearings. All relevant considerations should be brought forward. The procedures of the Legislative Assembly are not designed to achieve these objectives. We will next make recommendations for procedures which will achieve them.

(c) Investigation and report to the Legislative Assembly

The Ethics Commissioner will be chosen by the Legislative Assembly for impartiality and credibility. We think that, when an allegation is made that a minister or MLA has breached a duty under the conflicts of interests system, the Ethics Commissioner should be responsible for ascertaining the facts and reporting them to the Assembly. We think that the Ethics Commissioner should also give the Assembly an impartial opinion as to whether there has been conduct deserving of sanction and as to what the sanction, if any, should be.

We think that the procedure should involve the following steps in a case which goes the whole way:

(1) receipt by the Ethics Commissioner of an allegation of breach of duty;

(2) a request by the Ethics Commissioner for, and receipt of, the minister's or MLA's version of the facts and their consequences;

(3) a preliminary investigation;

(4) a formal hearing;

(5) a report and recommendations by the Ethics Commissioner to the Legislative Assembly;

(6) disposition of the matter by the Legislative Assembly.

(d) Detailed procedure[1]

(1) Allegation of breach of duty

A question of some difficulty is this: who should be able to bring about an investigation by bringing to the Ethics Commissioner an allegation that a minister or MLA has breached a duty under the conflicts of interests system?. A second question is: should the Ethics Commissioner be able to start an investigation on his or her own initiative?

Under Federal Bill C-46, the Prime Minister, in the case of a minister, and either House, in the case of an MP or senator, would be able to refer a matter of conduct to the proposed Conflict of Interests Commission. In addition, the Commission would be able to commence proceedings on its own initiative.

Under the Ontario *Members' Conflict of Interest Act*, the cabinet, in the case of a minister, and the Legislature, in the case of an MLA, can refer a matter to the Conflict of Interests Commissioner. In addition, an MLA "who has reasonable and probable grounds" can request the Commissioner to act. The Commissioner is not given power to act on his or her own initiative.

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[1] A flow chart of the procedure appears at page 28.

We have no doubt that the cabinet should be able to refer to the Ethics Commissioner an allegation affecting a minister, and we have no doubt that the Legislative Assembly should be able to refer an allegation affecting an MLA. We have no doubt, either, that an MLA should be able to make an allegation about the conduct of another MLA.

The major question is whether a member of the public should be able to make an allegation to the Ethics Commissioner.

One main purpose of the conflicts of interests system in general, and of the investigation system in particular, is to maintain public confidence in the integrity of the Legislative Assembly, the cabinet, and their members, that is, the political establishment. An investigation system which could be activated only by a member of that establishment is not, we think, sufficient for the purpose.

Our first thought was that accepting complaints from the public would open the floodgates to masses of unfounded and harassing allegations, and that a member of the public who thought something was wrong should have to persuade an MLA to bring a complaint forward. We think, however, that the Ethics Commissioner can be relied on to sift out completely unfounded allegations from those which should be investigated. While Alberta and Wisconsin are not necessarily the same in this respect, the Review Panel note that in Wisconsin the Ethics Board, which receives complaints from the public, has had no difficulty in coping with those which it does receive, which are not numerous.

We therefore think that members of the public should be able to bring to the Ethics Commissioner allegations of breaches of duties under the conflicts of interests system by ministers and MLAs. The only requirements should be that the complainant give his or her identity and that allegations be made in writing. An anonymous complaint should not receive any attention.

The next question is whether the Ethics Commissioner should be able to comence proceedings on his or her own initiative, as the federal Commission will be able to do. We think not. If no one is concerned enough to come forward, we do not think that the Ethics Commissioner should act. There is one exception. If the Ethics Commissioner sees that a minister or MLA is proceeding in contravention of advice given by the Ethics Commissioner, the Ethics Commissioner should be able to proceed on his or her own initiative to investigate and report.

(2) Request for the minister's or MLA's version

If the Ethics Commissioner thinks that an allegation is totally unfounded, he or she will advise the complainant to that effect and close the file.

However, in the ordinary case, the Ethics Commissioner will ask the minister or MLA for his or her version of the circumstances.

(3) Preliminary investigation

If, upon receiving the minister's or MLA's version, the Ethics Commissioner thinks that there is still something which should be investigated further, the Ethics Commissioner should have two options. One is to arrange for a preliminary investigation. The second is to go directly to a formal hearing.

We think that the preliminary investigation should not usually be conducted by the Ethics Commissioner or by a member of the Ethics Commissioner's staff. Rather, the Ethics Commissioner should retain someone, a lawyer or other investigator, to conduct it and give the findings in writing. This will maintain the Ethics Commissioner's objectivity. It will also avoid the necessity of maintaining a staff for this purpose.

The preliminary investigator's function is to interview witnesses, examine documents, and report his findings in writing to the Ethics Commissioner. The preliminary investigator should not have power to compel the giving of information or the production of documents. His or her report should be confidential, except as against the minister or MLA, unless introduced in a formal hearing. Its purpose is merely to enable the Ethics Commissioner to decide whether a formal hearing is necessary and to outline the evidence which is available.

Upon receiving the investigator's report, the Ethics Commissioner should decide whether there are grounds for a formal hearing to determine the facts and formulate a recommendation for the Legislature. If the answer is yes, the Ethics Commissioner should arrange for a formal hearing.

(4) Formal hearing

A formal hearing should be held unless the Ethics Commissioner, upon receiving the minister's or MLA's comments or upon receiving the report of a preliminary investigator, thinks there are no grounds for proceeding further.

The Review Panel think that a formal hearing, like a preliminary investigation, should not usually be conducted by the Ethics Commissioner or a member of his or her staff. Rather, the Ethics Commissioner should arrange with a person with appropriate adjudicative or legal experience to conduct the hearing and report in writing to the Ethics Commissioner with findings of fact and recommendations for disposition of the recommendations.

The hearing officer should have the powers of a commissioner under the *Public Inquiries Act* so as to be able to compel witnesses to attend and to compel the production of documents. The hearing should be open to the public unless the hearing officer, for special reason, decides to hold it, or some part of it, in private.

(5) Report and recommendations to the Legislature

Upon receiving a report and recommendations from the hearing officer, the Ethics Commissioner, in light of the report, should prepare a report and recommendations to the Legislative Assembly and send it along to the Speaker.

If the Ethics Commissioner finds that the allegation is unsupported or does not disclose a breach of duty by the minister or MLA, he or she should recommend that the Assembly so find and take no further action. If the Ethics Commissioner finds that there has been a breach of duty, he or she should make a recommendation as to what action the Assembly should take.

The Ethics Commissioner may find that a breach of duty was trivial, inadvertent, or committed in good faith. If so, he or she should be able to recommend that no sanction be imposed. Alternatively, he or she should be able to recommend that if the minister or MLA does what can be done to rectify the breach, either no sanction or a lesser sanction be imposed.

(6) Disposition by the Legislative Assembly

Upon receiving the Ethics Commissioner's report and recommendations, the Speaker should refer them to the appropriate committee of the Legislative Assembly, or, if there is no such committee, to the Assembly itself. A time limit should be placed on the Assembly's proceedings, probably 30 days from the delivery of the Ethics Commissioner's report to the Speaker, or, if the Legislature is not then in session, within 30 days of the opening of the next session.

The Legislative Assembly should be at liberty to adopt the Ethics Commissioner's report with or without amendments, to reject it entirely, or to substitute a different determination. It should continue to have power to impose a broad range of sanctions. However, imprisonment, which is a sanction that the Assembly can impose for contempt of the Assembly, is not appropriate for a breach of duty under the conflicts of interests system. The sanctions available should be a reprimand, a fine, suspension and expulsion.

The power to dismiss ministers should remain with the executive branch. However, the Assembly should have power to impose sanctions upon an MLA for breaches of duty under the conflicts of interests system in the course of a ministerial office as well as the office of MLA.

(e) General provisions

The Ethics Commissioner should be able, at any stage before the holding of a formal hearing, to decide that an allegation should not be investigated further and to close the file. Upon doing so, the Ethics Commissioner should inform the complainant accordingly. Once a formal hearing has commenced, however, the Ethics Commissioner should make a report and recommendations to the Legislative Assembly.

At every stage of the Ethics Commissioner's proceedings, the minister or MLA should be given complete information, adequate notice of proceedings, and full opportunity to meet allegations against him or her and to present his or her own case.

This would apply to an investigation and to a formal hearing. It would include receiving a report made by the preliminary investigator or a hearing officer and having an opportunity to make representations about it before the Ethics Commissioner takes the next step. The Legislative Assembly's rules would govern proceedings before it.

At any stage before the formal hearing, the minister or MLA should be able to waive the preliminary investigation or formal hearing or both and agree that the Ethics Commissioner may proceed directly to make a report and recommendations to the Legislature. This would enable the Ethics Commissioner to get on with the proceedings, and it might save the MLA a period of rumour and innuendo. The Ethics Commissioner would have to take care to be sure that all the facts had come out, but it will often be clear that they have.

The Ethics Commissioner's reports to the Legislature on specific matters should, in the Review Panel's opinion, be available to the public. The Review Panel think it desirable that an advance copy of a report about a minister or MLA on the government side should go to the Premier and that an advance copy of a report about an MLA of another party should go to the house leader of that party. However, the interval before the report becomes public should be a matter of days at the most, and it should be the Ethics Commissioner's responsibility to see that it is available to the public, though not necessarily to provide copies.

(f) Comments about the proposed procedure

It seems to the Review Panel that the procedure we have suggested would be practicable and efficient. The functions to be performed by the Ethics Commissioner should not be burdensome or time-consuming in any one case, and the Review Panel doubt that the cumulative effect would cause difficulty in that regard. The Ethics Commissioner would not be required to keep a staff on hand to deal with allegations, as he or she would merely retain an investigator and a hearing officer when required.

It seems to the Review Panel that the procedure would protect the public interest. Each allegation would be examined by an independent and impartial functionary chosen by the Legislative Assembly for the purpose, and it would be proceeded with if there were grounds for proceeding with it. Anything which goes to the Assembly would be accompanied by findings and recommendations properly arrived at after proper investigation and hearing. The public would know what the Assembly had before it and what it did with it and could pass its own judgment.

It seems to the Review Panel that the procedure would be fair to ministers and MLAs. The Ethics Commissioner would refuse to proceed with obviously unfounded allegations. A minister or MLA would be given notice at every stage and an opportunity to make a case at every stage. The Ethics Commissioner would not only be independent or impartial himself or herself but would be acting upon reports of independent and impartial investigators and hearing officers.

At present, allegations of conflicts of interests must be pursued and defended through the political process in which all protagonists have strong vested interests. Except in an extreme case in which a public inquiry is held, there is no fact-finding process or objective assessment in which the public can have confidence. The time and energy of Government and Legislative Assembly are wasted. The most likely result is an inconclusive one which will sink into the public consciousness as yet more smoke which may reflect the existence of yet more fire. The procedure which we recommend should minimize these problems.

(g) Ethics Commissioners' reports

The Review Panel have recommended that proceedings should end if, at any stage, the Ethics Commissioner concludes that an allegation is unfounded. In that case, the Ethics Commissioner would not report the allegation to the Legislative Assembly. There are two reasons for this. One is that carrying the matter further would waste time and resources. The second is that the procedure should not be a vehicle for publicizing unwarranted allegations.

One problem with this is that if the Ethics Commissioner decides not to proceed, the process is not open to public scrutiny. The Review Panel think that the Ethics Commissioner should make an annual report to the Legislative Assembly about allegations received and not proceeded with. The report should be careful not to identify the minister or MLA involved in an unfounded allegation, or to provide the means of identification. It should indicate the general nature of the things the Ethics Commissioner has dealt with.

The Review Panel have considered whether the Ethics Commissioner should have the power to deal with well-founded but minor allegations of breaches of duty, for example, the acceptance of minor hospitality in contravention of the rules or an inadvertent failure to disclose a small asset. We think, however, that any breach of duty should go forward to the Legislative Assembly. If the Ethics Commissioner recommends that no action be taken, or recommends that no action be taken if the minister or MLA takes certain prescribed steps to rectify the situation, we expect that the Assembly will act accordingly with no waste of time.

(h) Formal Recommendations

Recommendation 17

The Review Panel recommends

(a) that the Legislative Assembly should make final decisions and impose sanctions for breaches of duties of ministers and MLAs under the conflicts of interests system.

(b) that the Ethics Commissioner should be responsible for ascertaining the facts of allegations of breaches of duty and reporting them to the Assembly and giving opinions as to whether the facts disclose breaches of duty and recommendations as to what sanctions, if any, should be imposed.

Recommendation 18

The Review Panel recommend:

(a) that the cabinet, in the case of a minister, and the Legislative Assembly in the case of an MLA, should be able to refer matters to the Ethics Commissioner for investigation and report any matter relating to the conduct of a minister or MLA under the conflicts of interests system.

(b) that anyone should be able to make an allegation to the Ethics Commissioner that a minister or MLA has committed a breach of duty under the conflicts of interests system, provided that the complainant is identified and the allegation is made in writing.

(c) that the Ethics Commissioner should not undertake an investigation on his or her own initiative, except where he has given confidential advice to a Member and has reason to believe that the Member has acted or is acting in contravention of such advice.

(See draft legislation, section 35.15)

Recommendation 19

The Review Panel recommend:

(a) that, unless an allegation of a breach of duty is clearly unfounded, the Ethics Commissioner should request the minister's or MLA's version of the circumstances.

(b) that ordinarily, the Ethics Commissioner should send the minister or MLA a copy of the allegation.

(c) that if, upon receiving the minister's or MLA's version, or in default of such version, the Ethics Commissioner thinks that there are grounds for holding a preliminary investigation, he or she should appoint an investigator who should interview witnesses, examine documents and report his or her findings and recommendations in writing to the Ethics Commissioner.

(d) that if, upon receiving the investigator's report, the Ethics Commissioner thinks that there are grounds for holding a formal hearing, the Ethics Commissioner should direct that a hearing be held and appoint a hearing officer and counsel to conduct the hearing.

(e) that the hearing officer, if the Ethics Commissioner so directs, should have the powers of a commissioner under the *Public Inquiries Act*, and that in any event the hearing officer should make a written report to the Ethics Commissioner giving his or her findings of fact and recommendations.

(f) that, upon receiving and considering the hearing officer's report, the Ethics Commissioner should report the Ethics Commissioner's findings and recommendations in writing to the Premier (if the proceeding was commenced by a reference from the cabinet) or to the Speaker of the Legislative Assembly (in any other case).

(g) that, if the Ethics Commissioner finds that a breach of duty was trivial, inadvertent, or committed in good faith, he or she may recommend that no sanction be imposed, or, alternatively, that if the minister or MLA does what can be done to rectify the breach, either no sanction or a lesser sanction be imposed.

(h) that the Speaker should refer a report of the Ethics Commissioner to the committee of the Assembly designated to deal with the Ethics Commissioner's reports, or, if no committee is designated, to the Assembly itself.

(i) that the Assembly should be at liberty to adopt the Ethics Commissioner's report with or without amendments, to reject it entirely, or to substitute a different determination and should continue to have power to impose a broad range of sanctions, not including imprisonment.

(j) that, while the power to dismiss ministers should remain with the executive branch, the Assembly should have power to impose sanctions upon an MLA who is a minister for things done in the course of a ministerial office as well as for things done in the course of the office of MLA.

(k) that the Assembly should deal with the Ethics Commissioner's report within 30 days from the delivery of the Report to the Speaker, or, if the Assembly is not in session when the report is delivered, within 30 days of the commencement of the next session of the Legislature.

(See draft legislation, sections 35.16-35.23)

Recommendation 20

The Review Panel recommends:

(a) that at every stage of the Ethics Commissioner's proceedings, the minister or MLA whose conduct is in question should be given complete information, adequate notice of proceedings, and full opportunity to meet allegations against him or her and to present his or her own case personally or by counsel.

(b) that at any stage before the commencement of a formal hearing, the Ethics Commissioner, at the request of the minister or MLA, and if satisfied that no further investigation is necessary, may dispense with a preliminary investigation or a formal hearing and make a report and recommendations to the Legislative Assembly.

(c) that the minister or MLA should be given a copy of the report and recommendations of a preliminary investigator and a hearing officer and be given an opportunity to make representations to the Ethics Commissioner before he or she takes the next step.

(d) that a formal hearing must be public unless the Ethics Commissioner or the hearing officer decides that it should be held in private.

(e) that all information given to the Ethics Commissioner must be confidential, except

  (i) as against the minister or MLA involved,

  (ii) information necessarily disclosed by a preliminary investigator in order to carry out his investigation,

  (iii) information introduced into a public hearing, and

  (iv) information used by the Ethics Commissioner in a report.

(f) the Ethics Commissioner should be under a duty to make available to the public a report made to the Premier or to the Legislative Assembly after an investigation, though it would be appropriate to give a copy to the Premier, in the case of a minister, or to the house leader of a party to which an MLA belongs, in the case of an MLA, a few days before it is made available to the public.

(g) that the Legislative Assembly's own rules should govern proceedings before the Assembly.

(See draft legislation, sections 35.17 to 35.22)

(8) REQUEST FOR ADVICE AND DIRECTIONS

A minister or MLA who thinks himself or herself wrongly accused of a breach of duty under the proposed conflicts of interests system may want to clear his or her name. A minister or MLA who finds that he or she has inadvertently breached a duty may want to bring the matter out into the open and have it disposed of before rumour and innuendo compound the problem. Machinery should be provided for a minister or MLA to bring such a matter to a head.

At present, section 33 of the *Legislative Assembly Act* allows an MLA, including a minister, to apply to the Court of Queen's Bench for a finding whether or not an existing contract or a payment already made is one in respect of which he or she is disqualified by the Act. If it is, the court can give directions as to how the disqualification can be removed and can supervise the performance of those directions by the MLA. As we understand the section, an MLA who has been found not disqualified, or an MLA who has carried out the directions of the court, is protected against further disqualification proceedings. This machinery is good in principle, but too narrow in application and too costly and time-consuming.

In the opinion of the Review Panel, a minister or MLA should be entitled to apply to the Ethics Commissioner for an opinion as to whether or not the minister or MLA, upon the facts stated by the minister or MLA, is in breach of any duty under the conflicts of interests system.

If the facts presented make it clear that the minister or MLA has not breached any duty under the proposed legislation, the Ethics Commissioner should give a written opinion to that effect. That opinion should end the matter. The minister or MLA should not, on the facts presented, be subject to further proceedings under the proposed legislation. If material facts have not been presented or have not been presented properly, this result would not follow. The responsibility for presenting the facts properly will be upon the minister or MLA.

If the facts presented do not clearly show that the minister or MLA has not breached a duty, the Ethics Commissioner should advise the minister or MLA of that fact and of the Ethics Commissioner's intention to direct that a preliminary investigation be conducted. At that point, the procedure for dealing with allegations of breaches of duty would take over, that is, the procedure which we have described above, which includes a preliminary investigation, a formal hearing, a report to the Legislature, and disposition of the report by the Legislature.

However, the minister or MLA would also, under that procedure, be able to request that the Ethics Commissioner proceed directly to a report and recommendations to the Legislative Assembly. If the Ethics Commissioner is satisfied that he has the necessary facts, he or she would do so.

In the result, the minister or MLA would be able to apply to the Ethics Commissioner instead of the Court of Queen's Bench for a finding as to whether the minister or MLA was in breach of duty and directions as to how to rectify it. Following the directions would not give the minister or MLA legal protection against further proceedings, but it is to be expected that the Legislative Assembly would accept the Ethics Commissioner's recommendations under such circumstances.

Recommendation 21

The Review Panel recommends:

(a) that a minister or MLA should be able to apply to the Ethics Commissioner for a finding as to whether or not, on the facts presented by the minister or MLA, the minister or MLA has committed a breach of duty under the proposed conflicts of interests system.

(b) that a finding by the Ethics Commissioner that, on the facts presented, the minister or MLA has committed no breach of duty should protect the minister or MLA against further proceedings based on those facts under the conflicts of interest system.

(c) that if the Ethics Commissioner thinks that it is not appropriate to dispose of the matter in that way and that there is grounds for an investigation, he or she should have power to direct that a preliminary investigation be held, and the matter should therafter follow the procedure under Recommendations 19 and 20, the Ethics Commissioner having the same powers, if requested by the minister or MLA, to proceed directly to a report to the Legislature, and to make all the recommendations which the Ethics Commissioner may make under Recommendations 19 and 20.

(9) RESTRICTIONS ON FORMER MINISTERS' ACTIVITIES

(a) Reasons for restrictions

The Review Panel's terms of reference require us to review "conflict of rules applicable to Members of the Executive Council". They do not specifically refer to conflict of interest rules relating to former cabinet ministers.

In the Review Panel's opinion, a review of the conflict of interest rules applicable to ministers would be incomplete without a review of the rules which do or should apply to them when they leave office. Ministers, while in office, acquire information and influence. This is an effect of office which continues after they leave.

The public perception is that the information and connections which ministers take with them when they leave office give them advantages in dealing with the Government which other people do not have. This perception is likely to be held strongly by people who see those with conflicting interests assisted by former ministers, and this gives rise to a fear, which is reasonable even if the facts of a given case do not support it, that those conflicting interests have an unfair advantage.

This public perception may upon occasion be grounded in fact: Mr. Justice William Brennan in his 1982 *Report of a Public Inquiry* said that "the evidence in the Inquiry made it abundantly clear that former Cabinet Ministers have a very distinct and definite advantage over other lobbyists or persons who wish to present their views on a particular matter to members of Cabinet". He was talking about easier access, not about an advantage in obtaining favourable decisions. The Review Panel, however, think his remarks significant.

The activities of former ministers can create problems for present ministers and departmental officials. Ministers and MLAs, as we have said earlier in this report, should act in such a manner as to maintain public confidence and trust in their integrity, objectivity and impartiality. So should non-elected officials. This duty includes a duty not to give preferential treatment to influential former colleagues. The conflicts of interests system should deal with both sides of the relationship between former ministers and incumbent officials.

There is a further point. The need to find employment in the private sector may exert pressure upon a minister's mind while in office. Even if it does not, an immediate taking up of employment with a business entity which has done business with the minister may create the perception that such pressure has been exerted. The requirement of a "cooling-off" period may alleviate both the fact of such pressure, if it exists in a particular case, and the perception.

This discussion has referred to former ministers only. MLAs who are not ministers do not tend to be in the same confidential relationship with ministers and departmental officials, and the Review Panel do not see any reason to restrict their activities after they leave the Legislature.

(b) Nature of restrictions

Under the Ontario *Members' Conflict of Interest Act*, a former minister is merely prohibited, for a twelve month period, from accepting a government contract or benefit awarded by a minister or a departmental official, and from making representations on behalf of himself or herself or someone else with respect to such a contract or benefit.

The prohibition does not apply to taking employment with the government, and it does not apply if the conditions on which a contract is granted are the same for everyone.

The Review Panel do not think that this is broad enough. Persons dealing with government can get much which is not within the category of contracts or benefits awarded by officials. Further, the restriction does not cover use of insider information.

Federal Bill C-46 goes further than the Ontario Statute. It provides that, for a period of one year after leaving office, a minister must not

(a) solicit or accept contracts and benefits from the Government on behalf of the former minister or anyone else;

(b) accept "employment with a person or entity, or appointment to the board of directors or equivalent body of an entity with which the former Minister...had significant official dealings during the last year of service in that office";

(c) act on a commercial basis in connection with any ongoing matter in connection with which the former minister had, while in office, acted for or advised the department or agency involved;

(d) give counsel for commercial purposes about the programs or policies of a department or agency with which the former minister had a direct and substantial relationship during the last year of office.

The Review Panel think that the Alberta conflicts of interests system should prohibit the first three items on this list, though not so as to prevent a minister from taking government employment, entering into a government contract after a fair bidding process, or receiving benefits under general government programmes. Since there is no other way to enforce such prohibitions, a breach should constitute an offence under legislation. Because the interests involved may be important economically, we think that a breach should be punishable by a substantial fine. Bill C-46 would allow a fine of up to $20,000, and we think that, while any amount is somewhat arbitrary, this is a reasonable upper limit.

The objection to this recommendation, put emotively, is that it will prevent a former minister from earning a livelihood. Put somewhat more objectively, it is that the the prohibitions will restrict the economic activities of former ministers to an extent which is unfair.

The Review Panel would meet this objection in part by conferring on the Ethics Commissioner a discretion to relax the prohibitions in a case in which a former minister can show hardship and in which the public interest does not require any restriction on the former minister's proposed activities or can be protected by a lesser restriction. An example of the latter would be a requirement that a former minister who takes employment with a private sector entity will not lobby and will not communicate insider information, supported by undertakings from the former minister and from the employer.

It should be noted that the proposed restrictions will not cover a broad area. For a year, they will preclude a former minister from lobbying his or her own department, other ministers, and anyone else with whom the former minister had "significant official dealings" during the last year in office. They will also preclude employment with an entity with whom the former minister had significant official dealings within that time. All other economic activity is left open. It is also appropriate to note that MLAs, including ministers, receive a form of reestablishment allowance of between 6 months and a year's MLA's pay. This will help to make up for any dislocation caused by the proposed restrictions.

It does not seem to the Review Panel unreasonable, as a general matter, to impose restrictions upon the use of information and influence, actual and apparent, if the restrictions are appropriately limited in time and scope. If the restrictions prove harsh in a particular case, the recommendation would provide an escape through the Ethics Commissioner.

Since any formula of words used to describe the kinds of relationships which will bring about the application of the post-employment restrictions will necessarily be general, the Review Panel think that a former minister should also be entitled to put before the Ethics Commissioner a description of the employment which he or she proposes to accept or the nature of the activity which he or she proposes to engage in. The Ethics Commissioner should then be able to give a ruling which will protect the former minister if he or she acts on it. Obviously, the former minister would have to be careful to provide all material information about the relationship between the former minister and the proposed employer, or between the former minister and the transactions involved.

(c) Formal Recommendations

Recommendation 22

The Review Panel recommends:

(a) that, a former minister, for a period of one year after leaving office, be prohibited from

  (i) soliciting or accepting contracts and benefits for himself or herself or any other person, from a department or agency with which he or she had significant official dealings within the last year of service in his or her office.

  (ii) accepting employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which he or she had significant official dealings during his or her last year of service.

  (iii) acting on a commercial basis in connection with any ongoing matter in connection with which he or she had, while in office, acted for or advised a department or agency involved in the matter.

(b) that a breach of one of these prohibitions should be an offence punishable on summary conviction by a fine not exceeding $20,000.

(See draft legislation, section 35.25)

Recommendation 23

The Review Panel recommends:

(a) that a former minister should be entitled to obtain from the Ethics Commissioner a ruling as to whether or not employment which he or she proposes to accept or has accepted, or an activity in which he or she proposes to engage or has engaged, would be or is in violation of a prohibition referred to in Recommendation 22.

(b) that the Ethics Commissioner should, subject to such terms and conditions as he or she thinks fit, have power to give an exemption from, or a variation of, a prohibition under Recommendation 22 in a case in which a former minister can show hardship and in which the public interest does not require any restriction or can be protected by a lesser restriction.

(c) that a former minister who acts in accordance with a ruling, exemption or variation granted by the Ethics Commissioner should be protected from prosecution under Recommendation 22.

(See draft legislation 35.25)

Recommendation 24

The Review Panel recommend that ministers and employees of the Government be prohibited from knowingly dealing with a former minister who is acting in breach of the prohibitions contained in Recommendations 22.

(10) IMPLEMENTATION OF REVIEW PANEL'S RECOMMENDATIONS

(a) Form of implementation

The Review Panel's original preference was to avoid as far as possible the use of legislation to implement the conflicts of interests system. We have concluded, however, that an adequate conflicts of interests system cannot be set up by any other means. Only legislation can bind MLAs, confer legal powers on the Ethics Commissioner, and impose enforceable restrictions on the activities of former ministers.

Some provinces have established conflicts of interests systems by special statutes. The Ontario *Members' Conflict of Interest Act* is an example, though it does not include the Ontario counterpart of the rules about Crown employment, contracts and payments, which are found in the *Legislative Assembly Act*. Alberta could follow this example.

However, we think that an amendment to the *Legislative Assembly Act* would best implement the whole conflicts of interests system applicable to ministers and MLAs. That is the statute which deals with the Legislative Assembly and its members. Part 2 of the act already contains the present disclosure and disqualification system, and it could be replaced by a more comprehensive part which would implement all of our recommendations about a conflicts of interests system for ministers and MLAs. Everything would then be in one place.

In the course of our deliberations, we have arranged for the preparation of a draft of amendments to the *Legislative Assembly Act* which would give effect to our recommendations. We attach that draft. We do not suggest that the draft should simply be taken and enacted. It is a discussion draft to show that our recommendations can be implemented in the general way we have suggested.

In addition, an amendment to the *Alberta Energy Company Act* repealing section 31 would be required.

(b) Formal recommendation

Recommendation 25

> The Review Panel recommend that the conflicts of interests system which we have recommended should be implemented by amendments to the *Legislative Assembly Act*, which might be along the general lines of the draft amendments in Part III of this Report.

3. SENIOR PUBLIC SERVANTS

A. WHO ARE "SENIOR PUBLIC SERVANTS" UNDER THE EXISTING SYSTEM?

The Review Panel's terms of reference require us to consider conflict of interest rules applicable to "senior public servants". The order in council does not define the term.

The term is also used without definition in the Premiers' guidelines. These, we understand, have generally been interpreted to apply to full-time officials appointed by order in council and to a few important part-time order in council officials. Deputy ministers are included. Full-time members of boards and agencies, if appointed by order in council, are included.

Deputy ministers (i.e., deputy heads of departments) and some members of boards and agencies are appointed under the *Public Service Act* and are therefore governed by that act.

B. SENIOR PUBLIC SERVANTS APPOINTED UNDER THE *PUBLIC SERVICE ACT*

(1) EXISTING CONFLICTS OF INTERESTS SYSTEM

Section 24 of the *Public Service Act* (see Appendix 3) contains prohibitions intended to ensure that members of the public service do not deal in Crown lands. Section 25 provides that, subject to any applicable collective agreement, any member of the public service can be dismissed for "misconduct" or "improper" conduct. These provisions apply to the whole of the public service, including the senior public servants appointed under the *Public Service Act*.

In 1978, the Hon. Merv Leitch promulgated *A Code of Conduct of Ethics for the Public Service of Alberta*, the current version of which is reproduced in Appendix 3. The code does not have any foundation in law (though it could be promulgated as a regulation under the *Public Service Act*), but it seems to be accepted as authoritative. Like section 24 of the *Public Service Act*, the code applies to the whole of the public service, including the senior public servants appointed under the *Public Service Act*.

The Public Service Commissioner has issued administrative interpretations of the code which, like the code itself, are not founded in law but appear to be accepted. Some departments have additional codes of ethics, which must not be less restrictive than the code itself and are supervised by the Public Service Commissioner.

The Public Service Commissioner is appointed by order in council and has the status of a deputy minister. Under section 4 of the *Public Service Act*, he is to administer the act, subject to general ministerial direction. He administers the code of conduct and gives advice about specific ethical problems.

In 1975, Premier Lougheed extended to "senior public servants" the disclosure and divestiture guidelines which he had enunciated for ministers in 1973. These guidelines were confirmed by Premier Getty and still apply, but one change has been made. The 1975 guidelines required public disclosure. Subsequently it was decided that the disclosure should not be public. Disclosure statements are now made through the Deputy Minister of the Executive Council and kept in the Attorney General's Department.

(2) THE REVIEW PANEL'S PROPOSALS

In the opinion of the Review Panel, the considerations of principle which require a conflicts of interests system for ministers and MLAs apply with equal force to the highest levels of the public service. Official actions at those levels are as likely, or almost as likely, as the official actions of minister and MLAs to affect the laws of the province and the rights of individuals. Officials at those levels, within their spheres of activity, are likely to have access to as much information as are ministers and to more information than MLAs. The maintenance of public confidence in the integrity of senior public servants, if not as close to essential as the maintenance of public confidence in the integrity of ministers and MLAs, is very important indeed.

In practice, we think that the problems of public perception are less with senior public servants. Whether this is because of the different way in which they are usually selected, the less controversial ways in which they function, the existence of disciplinary systems covering them, the existence of more extensive systems for resolving problems which arise from their activities, or because of some other reason, we do not know.

One very significant difference between the positions of elected and non-elected officials is the function of the Ombudsman.

The Ombudsman can investigate and report about "any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment". There are exceptions, but the Ombudsman's investigatory powers extend to almost every official action at every sub-ministerial level. They do not include the investigation of an allegation of a conflict of interest as such, but they do include the investigation of almost every conflict of interest which results in injury to the interests of any member of the public. The Ombudsman cannot himself rectify wrongs, but he can report them and, if necessary, bring them to public attention.

There are other differences between senior public servants, on the one hand, and ministers and MLAs, on the other. The public service is a much more diffuse and differently articulated body than are the cabinet and the Legislature. It has developed its own ways of dealing with the subject of conflicts of interests. Employment contracts and arrangements are involved.

The conflicts of interests system which we have recommended for ministers and MLAs cannot simply be transported across to senior public servants.

We have recommended that legislation state rules of conduct for ministers and MLAs. As we have said, the *Code of Conduct and Ethics for the Public Service of Alberta* already does state rules for senior public servants who come under the *Public Service Act*. We have reviewed the code and do not see reason to find serious fault with it. We note further that it has been developed in the light of experience and, given the diversity of circumstances to which it applies, we think that that is the best way for it to continue to develop. We trust that it will be kept under review, but we do not make any proposals for change in it.

We have recommended that an Ethics Commissioner be appointed to administer the conflicts of interests system for ministers and MLAs. The Public Service Commissioner already performs part of the same functions for the senior public servants who come under the *Public Service Act*. While he does not have the same theoretical independence from the Government as that which we recommend for the Ethics Commissioner, he has a great deal of practical independence and an authoritative status. We think that his function should continue and should be somewhat expanded.

We have recommended the establishment of a more comprehensive system of disclosure of financial interests by ministers and MLAs. This involves complete disclosure of all assets, liabilities and sources of income to the Ethics Commissioner, followed by a public disclosure statement prepared by the Ethics Commissioner which will disclose financial interests and relationships but will not give amounts or values. We have given reasons for thinking that it is necessary and that, particularly since amounts and values need not be disclosed publicly, it is fair to ministers and MLAs and will not prevent recruiting of good people.

We think that much the same considerations apply to senior public servants appointed under the *Public Service Act*. Accordingly, we think that much the same disclosure system should apply to them. We think also that disclosure of the financial interests of spouses and children should be carried out to the same extent and in the same way.

We think, however, that, under the disclosure system, the Public Service Commissioner should perform for senior public servants the functions which the Ethics Commissioner will perform for ministers and MLAs, that is, that the Public Service Commissioner should receive disclosure of the same information as that given to the Ethics Commissioner by ministers and MLAs (which would remain confidential) and, in consultation with each senior public servant, should prepare a similar public disclosure statement, which would remain in his office on a file open to the public.

The present disclosure system affecting senior public servants is, as we have said, imposed by the Premiers' guidelines. We think that the new system should be established by amendment to the *Public Service Act*. Legislation will be a better foundation for a process requiring complete disclosure to an official and filtered disclosure to the public, and the *Public Service Act* will be a better foundation for the function which the Public Service Commissioner will perform in the process.

We have recommended that the Ethics Commissioner have power to give authoritative rulings on conflicts of interests matters. We think that the Public Service Commissioner should perform the function of giving advice on such matters, and, indeed, our information is that that is already part of his function. However, we do not think that his advice should confer legal protection on a senior public servant in the same way as it will confer legal protection on a minister or MLA. That would, we think, interfere unduly with the relationships between ministers and officials.

We have recommended a procedure for the investigation of allegations of conflicts of interests about ministers and MLAs and for the making of reports to the Legislative Assembly with recommendations. We do not recommend that this system be adapted for senior public servants. This would interfere unduly with practises and procedures already developed. Also, the Ombudsman, as we have said, performs an investigatory and recommending function which covers much of what the Ethics Commissioner would cover if his function were to extend to the public service.

We have recommended that certain restrictions be placed on the activities of former ministers for a year after leaving office. That raises the question whether or not similar restrictions should apply to senior public servants.

We think that a similar restriction on lobbying should apply. The public, and other persons involved, are likely to perceive lobbying by a former senior public official as being likely to give the inside track to the interests of those whom the former official represents. The restriction would generally be more limited, as senior public officials will not usually have had the same broad contact with broad areas of the Government as will ministers. The Public Service Commissioner should have the same power to give relief to senior public servants where the public interest permits it as the Ethics Commissioner will have with relation to ministers.

Other than a restriction on lobbying, we do not think that the public interest requires restrictions on the post-employment activities of senior public servants and that different considerations apply.

We think that the post-employment restriction should go into the *Code of Conduct and Ethics*. It will not be legally enforceable, because the former public servant, by definition, will no longer be a public servant and subject to the code or to disciplinary action for not conforming to it. It will, however, be an ethical statement, and we do not doubt that most, if not all, departing public servants will recognize that it is binding on their consciences.

We think that there should be a correlative duty on incumbent officials not to receive representations from former senior public servants which they know to be in breach of the restrictions contained in the code. Incumbent officials are governed by the code and will pay attention to it. We think that the provision will be useful and will help to maintain public confidence in government.

(3) WHO SHOULD BE "SENIOR PUBLIC SERVANTS" UNDER THE PROPOSED SYSTEM?

(a) Order in council appointments under the *Public Service Act*

We now turn to the question: to what senior public servants should the recommendations we have just made apply? The significant differences between the present system and the system which would apply to senior public servants under our recommendations are in the disclosure and post-employment areas.

The senior public servants appointed under the *Public Service Act* who are covered by the Premiers' guidelines should be covered by the proposed conflicts of interests system. The question is whether the coverage should be extended to others.

(b) Assistant Deputy Ministers

The considerations which have caused the Review Panel to recommend that the disclosure and post-employment requirements apply to senior public servants are that senior public servants have a high degree of influence on government actions and a high degree of access to government information. Representations have been made to us that these considerations apply to one additional level of the regular public service and suggest that officials at that level should be included in the system. That class is assistant deputy ministers. We agree, and we think that they should be included in the conflicts of interests system applicable to senior public officials appointed under the *Public Service Act*.

Assistant deputy ministers are not appointed by order in council. It has been suggested to the Review Panel that only officials appointed by order in council should be included in the senior public officials to which the conflicts of interests system applies. We certainly do not recommend any change in the method of appointment. However, if, as we have recommended, the system is to be imposed under the authority of the *Public Service Act*, rather than by Premiers' guidelines, we do not think that there is any reason to restrict it to order in council appointments.

The Review Panel recognize that not all assistant deputy ministers exert the same degree of influence and have the same degree of responsibility and access to information. We recognize also that nomenclature may vary from department to department and that title inflation may have brought somewhat less senior officials into the "assistant deputy minister" category. These problems may make across-the-board application of our recommendations difficult or undesirable. We do, however, think that consideration be given to these recommendations and applied where they are found to be applicable.

(c) Ministers' chiefs of staff and executive assistants

It has also been represented to us that there is another class of senior public servants who should be covered by the conflicts of interests system. Ministers customarily have assistants who are usually called "chiefs of staff" or "executive assistants". The essential characteristics of the ministerial assistants whom we have in mind are that they are chosen by a minister and work in a confidential relationship with the minister in carrying out the minister's functions. Most are retained under contracts terminable at pleasure. A few are seconded from the public service.

Some consider chiefs of staff and executive assistants as extensions of their ministers with no independent functions and little to do with ministerial decisions. This would suggest that they need not be covered by a conflicts of interests system. Others think that they have an important effect on decisions and point out that they have access to a great deal of important non-public information. This perception itself is a factor to consider. These considerations would suggest that chiefs of staff and executive assistants should be covered, and at least some of their federal counterparts are covered by the federal *Conflict of Interest and Post-Employment Code for Public Office Holders*.

The Review Panel have concluded that the decisive factor determining whether or not a conflicts of interests system should apply to chiefs of staff and executive assistants is their relationship to their ministers. Because of the confidential nature of the relationship, a minister will necessarily suffer severely from an impropriety, or even a suggestion of impropriety, committed by a chief of staff or executive assistant. The minister will therefore have every reason to insist upon high standards of conduct, and, given an employment terminable without cause on only 30 days notice, every reason to terminate the employment of a chief of staff or executive assistant who becomes an embarrassment.

Prescribing ethical duties for chiefs of staff and executive assistants will add little, if anything, to the ethical duties which they owe their ministers. A provision under which the Ethics Commissioner could give them authoritative advice would derogate from their relationships to their ministers. Investigation by the the Ethics Commissioner and disposition by the Legislative Assembly would be inappropriate. Therefore, most aspects of the conflicts of interests systems we have proposed should not apply to chiefs of staff and executive assistants.

There is one aspect of a conflicts of interests system which the Review Panel think should apply to chiefs of staff and executive assistants, though not in the same way as it applies to ministers, MLAs and other senior public servants. It is the requirement of disclosure of financial interests.

We think that chiefs of staff and executive assistants should make the same degree of financial disclosure of their own interests and those of their spouses and minor children as will ministers, MLAs and other senior public servants. We think, however, that the disclosure should be made to the minister on a confidential basis, and not to either the Ethics Commissioner or the Public Service Commissioner or to the public. The reason is that it is the minister and not the Ethics Commissioner, the Public Service Commissioner or the public at large, who bears the responsibility for the conduct of the chief of staff or executive assistant, and it is the minister who needs the information so that he or she can note conflicts of interests or even unexplained accretions to net worth.

We do not think that it would be appropriate to put a disclosure requirement into legislation. Our recommendation is that it be made a term of the contract of employment of chiefs of staff and executive assistants who are specially retained by ministers, who are the great bulk of the class. This could be done either individually by exchanges between a minister and a chief of staff or executive assistant, or by an amendment to the order in council under which appointments are made. The latter is more efficient and would automatically define the class included in our recommendation.

There are, of course, a few members of the class who are seconded from the public service. Here, we think that the same considerations make similar disclosure desirable during the term of service of the chief of staff or executive assistant. This would have to be arranged by special agreement.

We think that the disclosure requirement should be made applicable to incumbents. While an exception could be made for cases of hardship or some form of conscientious objection to a change in terms of employment, we do not recommend it, as we cannot see how the form of disclosure we are recommending can cause any real hardship.

There is a difficult question as to whether post-employment restrictions should apply to chiefs of staff and executive assistants. While they may very well have connections in the Government which are as extensive as those of ministers and deputy ministers, we think, on the one hand, that the influence of chiefs of staff is not likely to be as great, and, on the other, that restrictions would bear more harshly than they will on ministers and deputy ministers, bearing in mind their different career conditions, the possibility of dismissal with little notice, and their lesser financial benefits. For these reasons, we have concluded that it is not desireable to impose post-employment restrictions upon them.

(4) FORMAL RECOMMENDATIONS

Recommendation 26

The Review Panel recommends that the conflicts of interests system described in Recommendation 27 apply to

(a) full-time senior public servants appointed under the *Public Service Act* by order in council, and

(b) assistant deputy ministers.

Recommendation 27

The Review Panel recommends that the conflicts of interests system applicable to the senior public servants described in Recommendation 25 should be as follows:

(a) The *Code of Conduct and Ethics for the Public Service of Alberta*

  (i) should be promulgated as a regulation under the *Public Service Act*,

  (ii) should be kept under review,

  (iii) should continue to apply to the senior public servants described in Recommendation 26 and should continue to be administered by the Public Service Commissioner.

(b) A system of disclosure of financial interests should be instituted for the senior public servants described in Recommendation 25 in substitution for that imposed by the Premiers' guidelines, as follows:

- (i) the system should be the disclosure system prescribed for ministers and MLAs under Recommendation 9 (except (g) and (h)), with necessary changes, including full confidential disclosure to the Public Service Commissioner followed by a public disclosure statement, and
- (ii) the system should be established by amendment to the *Public Service Act*.

(c) Senior public servants described in Recommendation 25 should be prohibited by the *Code of Conduct and Ethics for the Public Service of Alberta*, for a period of one year after leaving office, from soliciting or accepting contracts and benefits, on behalf of the former senior public servant or any other person, from a department or agency with which the former senior public servant had significant official dealings within the last year of service in their offices, and that employees of the Government be prohibited by the code from knowingly dealing with a former senior public servant who is acting in breach of the prohibition contained in this Recommendation.

(d) The Public Service Commissioner should

- (i) perform with respect to the disclosure system the functions which the Ethics Commissioner will perform with respect to the disclosure system proposed for ministers and MLAs, and
- (ii) have power to interpret and relax the prohibitions on the activities of former senior public servants under this Recommendation on any terms and conditions necessary to protect the public interest.

Recommendation 28

The Review Panel recommend that a chief of staff or executive assistant of a minister

(a) appointed by a minister under the order in council providing such appointments, or

(b) seconded to a minister from the public service

be required to make to the minister the same financial disclosure which ministers and MLAs are required to make to the Ethics Commissioner, such disclosure to remain confidential, and that the requirement be made, where applicable, by an amendment to the order in council, and in other cases by agreement.

B. OTHER SENIOR PUBLIC SERVANTS

The recommendations which we have made apply to senior public servants who are governed by the *Public Service Act*. We have not thought it necessary to comb through other boards and agencies to discover what systems apply to them and what problems they have. The representations made to us have not disclosed problems, and we have thought it best to devote our limited time and resources to the political process, with some attention to the public service. We do not make any specific recommendations with respect to other boards and agencies.

PART III - DRAFT LEGISLATION

1. *The Legislative Assembly Act is amended by this Act.*

2. *Part 2 is amended by substituting the following for Divisions 1 and 2:*

Division 1

Ethics Commissioner

23 **Appointment**

There shall be appointed, as an officer of the Legislature, a commissioner to perform the functions described in this Part, to be called the Ethics Commissioner.

(See Recommendation 3)

24 **Functions and duties**

The Ethics Commissioner has the following duties and functions:

(a) to provide Members of the Legislative Assembly and Members of the Executive Council with information and general advice about their ethical duties under section 35.13,

(b) to provide specific opinions and recommendations to such Members under section 35.14,

(c) to prepare and deliver to the Clerk of the Legislative Assembly public disclosure statements relating to Members, and in order to do so,

  (i) to receive financial disclosure statements from each such Member, and

(ii) to meet each Member to ensure that adequate disclosure has been made and to provide advice thereon,

all as provided in Division 2.1,

(d) to provide for the investigation and formal hearing of allegations that a Member has committed a breach of duty under this Act and, when required, to report thereon to the Legislative Assembly, all as provided in Division 2.5,

(e) to report upon the affairs of his office to the Speaker of the Legislative Assembly

(i) annually, and

(ii) whenever the Ethics Commissioner is of the opinion that a matter should be brought to the attention of the Legislative Assembly, and

(f) to perform such other functions and exercise such other powers as are provided for in this Part.

(See Recommendation 3)

25 Method of Appointment

(1) The Ethics Commissioner shall be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

(2) A vacancy in the office of the Ethics Commissioner which occurs while the Legislature is not in session or which is not filled during the session during which it occurs may be filled by the Lieutenant Governor in Council.

(3) An appointment under subsection (3) terminates 30 days after the commencement of the next ensuing regular session of the Legislature unless it has been confirmed under subsection (1).

(See Recommendation 3)

26 Restrictions

The Ethics Commissioner

(a) may not be a member of the Legislative Assembly or the Executive Council, and

(b) may not hold any office or engage in any occupation or business which might cause a conflict between his privates interests and his duties as Ethics Commissioner, but

(c) may be appointed on either a full time or part time basis.

(See Recommendation 3)

27 Oath of office

(1) Before entering on his duties, the Ethics Commissioner shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except as provided in this Part, divulge any information received by him under this Part.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

(3) Every person employed by the Ethics Commissioner shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Ethics Commissioner, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(See Recommendation 3)

28 Term of office

Unless his office sooner becomes vacant or the appointment is for a shorter term, the Ethics Commissioner holds office for 5 years from appointment or confirmation and thereafter until his successor is appointed or a period of 6 months has expired, whichever occurs first.

(See Recommendation 3)

29 Termination

The office of the Ethics Commissioner becomes vacant upon

(a) the delivery of his written resignation to the Clerk of the Legislative Assembly, or

(b) his dismissal by the Lieutenant Governor in Council upon the recommendation of the Legislative Assembly for disability, neglect of duty, misconduct or bankruptcy.

(See Recommendation 3)

30. Financing of operations

(1) The Ethics Commissioner shall submit annually to the Select Standing Committee on Legislative Offices estimates of sums that will be required to be provided by the Legislature to defray the costs and charges of the Ethics Commissioner during the year for which the estimate is made.

(2) Having reviewed the Ethics Commissioner's estimate, the Select Standing Committee shall forward it to the Provincial Treasurer for presentation to the Legislative Assembly.

(See Recommendation 3)

30.1 Protection

No action lies against the Ethics Commissioner or a member of his staff for any action or omission in a proceeding under this Act.

(See Recommendation 3)

Division 2

Ethical duties of Members

31 Entrustment of offices and powers

The office and powers of a Member are entrusted to the Member to advance the public interest and are subject to the duties set out in this Act.

(See Recommendation 4)

32. General ethical duties

A Member is under the following duties:

(a) a duty to exercise his office and powers for what appears to him to be the benefit of the public,

(b) a duty not to exercise his office or powers for private benefit, and

(c) a duty to exercise his office and powers in such a way as to maintain public confidence in the integrity of the institutions of government.

(See Recommendation 5)

33. Specific ethical duties

(1) The duties of a Member under section 32 include the following duties:

(a) a duty to perform his duties of office and arrange his private affairs in such a manner as to maintain public confidence and trust in his intregity, objectivity and impartiality,

(b) a duty not to take part in any decision, action, or course of official conduct, which might affect a private interest of the Member or the Member's spouse or minor child, other than

(i) an interest shared with the public or a broad class of the public,

(ii) an interest in determining the compensation or benefits in respect of the Member's office, or

(iii) an interest too trivial to affect a decision, action or course of conduct,

(c) a duty, where a decision described in clause (b) comes before a meeting of the cabinet or Legislative Assembly or a committee thereof, the case may be, to declare the interest and withdraw from the meeting without voting on or participating in the consideration of the decision,

(d) where the Member is a Member of the Executive Council and a matter described in clause (b) requires his decision, a duty to request another Member of the Executive Council to perform the Member's duties in connection with the decision,

(e) a duty not to use the Member's position or powers to influence the government or a department or agency of the government

(i) for the benefit of the Member or the Member's spouse or minor child, or

(ii) except in the course of the Member's public duty, for the benefit of any other person,

(f) a duty not to use or communicate

(i) for the benefit of the Member or the Member's spouse or minor child, or

(ii) except in the course of the Member's public duty, for the benefit of any other person,

information which the Member has gained in the course of carrying out his office or activities related to it and which is not available to the public generally, and

(g) a duty not to accept a fee, gift or other benefit that is connected directly or indirectly with the performance of the Member's office, except

(i) a salary or other payment or benefit prescribed by law,

(ii) a gift or personal benefit that is received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office, if

(A) the total value of the gifts and benefits received from the same source in any twelve-month period is $200 or less, or

(B) the Ethics Commissioner is satisfied that there is no reasonable possiblity that acceptance of the fee, gift or benefit will create a conflict between the private interest and the public duties of the Member.

(2) This Act does not prohibit activities in which Members of the Legislative Assemly normally engage on behalf of constituents.

(3) A Member who places publicly traded securities in a blind trust complies with his duties under this section insofar as the assets in the blind trust are concerned.

(4) A Member discharges the duty described in subsection (1)(c) if, as soon as practicable upon receipt of a gift or personal benefit that is received as an incident of protocol or of the social obligations that normally accompany the responsibilities of office and has a value greater than that permitted by subsection (1)(g)(ii)(A), the Member applies to the Ethics Commissioner for approval of its retention, and, if that approval is declined, takes such steps as the Ethics Commissioner recommends.

(5) A spouse or minor child of a Member shall not accept a fee, gift or benefit that is connected directly or indirectly with the performance of the Member's office unless the Member himself could have accepted it under subsection (1)(g) if it had been paid or given to the Member.

(See Recommendations 6 and 8)

Division 2.1

Financial Disclosure

34 Disclosure to Ethics Commissioner

(1) Every Member shall

(a) within 60 days after election to the Legislative Assembly,

(b) within 60 days after his appointment to the Executive Council if he has not filed a current disclosure statement as a Member of the Legislative Assembly, and

(c) within 12 months after filing his last disclosure statement,

file with the Ethics Commissioner a disclosure statement in a form satisfactory to the Ethics Commissioner.

(2) A Member shall, within 30 days after the occurrence of a material change to the information contained in a current disclosure statement, report the change in writing to the Ethics Commissioner.

(See Recommendation 9)

35 Information to be disclosed

Every disclosure statement filed under section 34

(a) shall include a statement of the assets, liabilities and financial interests of the Member and, so far as known to the Member, of

(i) the Member's spouse and minor children, and

(ii) any private or non-distributing corporations in which the Member, the Member's spouse and minor children or any of them hold shares legally or beneficially,

but shall not include publicly traded securities in a blind trust,

(b) need not include obligations being incurred for ordinary living expenses which will be discharged in the ordinary course of business,

(c) shall include a statement of the income which the Member and, so far as known to the Member, any of the other persons mentioned in clause (a), have received in the preceding 12 months or are entitled to receive in the next succeeding 12 months, and the sources of the income,

(d) shall include a statement of all gifts and benefits received by the Member, and, so far as known to the Member, by his spouse or minor child, as an incident of the protocol or social obligations that normally accompany the responsibilities of the Members office, unless the total value of gifts and benefits received from the same source in the preceding 12 months is $200 or less.

(e) shall include, as a separate item, the names of

(i) the Member's spouse and minor children,

(ii) corporations of which the Member is a director or senior officer,

(iii) corporations in which the Member holds shares, other than co-operatives, credit unions and corporations, the shares of which are not publicly traded,

(iv) partnerships, including limited partnerships, and

(v) a person or group of persons acting as the agent of the Member and having actual authority in that capacity from the Member who, while directly associated with the Member, have become a party to a contract to which the Crown was also a party or received payment of public money from the Crown or a person acting on behalf of the Crown.

(See Recommendation 9)

35.1 Preparation and filing of public disclosure statement

(1) The Ethics Commissioner shall, as soon as practicable after a Member has filed a disclosure statement under section 34,

(a) meet the Member (and the Member's spouse, if available) to ensure that the Member has made adequate disclosure and to advise the Member about the Member's obligations under this Act,

(b) prepare a public disclosure statement in form satisfactory to the Commissioner, and

(c) file the public disclosure statement with the Clerk of the Legislative Assembly.

(2) Where a Member has reported to the Ethics Commissioner a change in the information contained in the Member's disclosure statement which, in the opinion of the Ethics Commissioner is material, the Ethics Commissioner, after consulting the Member, shall prepare and file with the Clerk of the Legislative Assembly either a supplementary public disclosure statement, which shall form part of the Member's public disclosure statement, or a new public disclosure statement.

(3) The Clerk of the Legislative Assembly

(a) shall retain a public disclosure statement and any supplementary disclosure statements while the Member continues to be a Member,

(b) shall make the public disclosure statement available for examination by any person who wishes to examine it, and

(c) may, to the extent which he considers reasonable in view of the facilities available to him, and upon payment of reasonable reproduction costs, provide a copy of the public disclosure statement.

(See Recommendation 9)

35.2 Contents of public disclosure statement

(1) Except as provided in this section, a public disclosure statement

(a) shall identify the assets, liabilities, financial interests and sources of income disclosed by the Member to the Ethics Commissioner, but

(b) shall not state the amount or value thereof.

(2) The following shall be excluded from a public disclosure statement unless the Ethics Commissioner is of the opinion that knowledge of the asset, liability, financial interest, source of income or information is likely to be material to the determination of whether or not a Member is or is likely to come to be in breach of a duty under this Act:

(a) an asset, liability or interest having a value of $1000 or less,

(b) a source of income of less than $1000 per year,

(c) information identifying a home or recreational property occupied by the Member or his family,

(d) things used personally by a Member or his family,

(e) publicly traded securities and similar assets which are in a blind trust as defined in section 21.1(5), and

(f) unpaid taxes and support obligations.

(3) The Ethics Commissioner may from time to time establish other categories of matters to be excluded from public disclosure statements on the grounds that they are of small importance and not likely to be material to the determination of whether or not a Member is or is likely to come to be in breach of a duty under this Act.

(4) If in the opinion of the Ethics Commissioner, knowledge of the amount or value of an asset, liability, financial interest or source of income is likely to be material to the determination of whether or not a Member is or comes to be in breach of a duty under this Act, the amount or value shall be included in the public disclosure statement.

(5) The Ethics Commissioner may exclude from the public disclosure statement a source of income received by a Member's spouse or child or a private company referred to in section 35 if

(a) the income is or will be received in respect of services that are customarily provided on a confidential basis, or

(b) the possibility of serious harm to a business of the spouse, child or company justifies a departure from the general principle of public disclosure.

(6) Information included in the disclosure statement of a Member to the Ethics Commissioner and not included in the Member's public disclosure statement is confidential, unless

(a) it is relevant to an investigation and report concerning the Member's conduct under Division 2.5, or

(b) it discloses a criminal offence or an offence against an act.

(See Recommendation 9)

35.3 Provincial Treasurer's report

(1) The Provincial Treasurer shall, after the end of each Government fiscal year, prepare a report showing in respect of each person who was a Member during that fiscal year

(a) the names of the persons directly associated with the Member in that fiscal year and the period of the direct association, as indicated by the returns furnished by the Member pursuant to section 35(e),

(b) information relating to payments made by the Crown to the Member in that fiscal year, and

(c) information relating to payments made by the Crown in that fiscal year to the respective persons directly associated with the Member in that fiscal year, as indicated by the returns furnished by the Member pursuant to this section.

(2) Each Provincial agency shall, in accordance with the directions of the Provincial Treasurer, furnish to the Provincial Treasurer after the end of each Government fiscal year, such information as the Provincial Treasurer requires for the purposes of his report under subsection (1) for that fiscal year insofar as it relates to payments made by that Provincial agency in that fiscal year to Members and to the persons directly associated with Members according to the returns furnished under this section.

(3) The Provincial Treasurer, in providing the information referred to in subsection (1)(b) and (c) in a report under that subsection,

(a) may classify payments in any manner he considers appropriate,

(b) shall show in respect of each class of payments the aggregate amount of the payments of that class made to each Member and to each person directly associated with him in the fiscal year, and

(c) shall show in respect of each person who was a Member in the fiscal year to which the report relates the aggregate amount of all payments of all classes made to that Member and the aggregate amount of all payments of all classes made to each person directly associated with the Member in the fiscal year.

(4) A report prepared under subsection (1) shall not include

(a) payments made to or on behalf of the Member pursuant to Part 3 or 4,

(b) payments required to be included in a report under section 43,

(c) payment of benefits under the *Alberta Health Care Insurance Act*,

(d) payments of social allowances or handicap benefits under the *Social Development Act*,

(e) payment of handicap benefits under the *Assured Income for the Severely Handicapped Act*,

(f) payment under the *Senior Citizens Benefits Act*,

(g) pensions under the *Widows' Pension Act*,

(h) compensation paid under the *Workers' Compensation Act* or *Blind Workers' Compensation Act*,

(i) payment made by way of student financial assistance under the *Students Finance Act*,

(j) senior citizen renter assistance grants under the *Property Tax Reduction Act* and homeowner refunds under that Act to homeowners who are 65 years of age or older,

(k) payments made by way of refunds, or

(l) any other class of payment by the Crown, if the disclosure in the report of the identity of the recipients would contravene any law in force in Alberta that contains confidentiality requirements in respect of that class of payments.

(5) When a report under subsection (1) is prepared, the Provincial Treasurer shall lay the report before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

35.4 Reports by Ethics Commissioner

(1) The Ethics Commissioner shall, at such times as he considers appropriate, and at least annually, report in writing to the Speaker of the Legislative Assembly

(a) the names of Members who, in the opinion of the Ethics Commissioner, have complied with the disclosure requirements of this Division,

(b) the names of Members who, in the opinion of the Ethics Commissioner,

(i) have not filed disclosure statements with him within the time limited by section 34, or

(ii) have not made the full disclosure required by section 35.

(2) The Speaker shall cause a report under subsection (1) to be laid before the Legislative Assembly if it is then sitting, or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(See Recommendation 9)

Division 2.2

Disqualification

35.5 Persons directly associated with a Member

(1) For the purposes of this Division, a person is directly associated with a Member if that person is

(a) the Member's spouse except where the Member and the spouse are living apart and are separated pursuant to a judicial separation or written separation agreement;

(b) a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation;

(c) a corporation carrying on business or activities for profit or gain and the Member is the beneficial owner of shares of the corporation other than publicly-traded shares;

(d) a partnership having not more than 20 partners

(i) of which the Member is a partner, or

(ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c);

(e) a person or group of persons acting as the agent of the Member and having actual authority in that capacity from the Member.

(1.1) Subsection (1)(c) does not apply where the corporation is

(a) an association as defined in the *Co-operative Associations Act*,

(b) a credit union incorporated under the *Credit Union Act*,

(c) a co-operative credit society incorporated by or under an Act of the Parliament of Canada, or

(d) The United Farmers of Alberta Co-Operative Limited.

(See Recommendation 11)

35.6 Disqualifying offices

(1) A person is liable to disqualification as a Member if he

(a) is at the time he becomes a Member, or becomes at any time while he is a Member, a member of the Senate or House of Commons of Canada,

(b) is at the time he is sworn in as a Member, or becomes at any time after he is sworn in as a Member,

(i) an employee of the Crown in right of Canada, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of an office to which he is appointed by or at the nomination of the Governor in Council or a Minister of the Crown in right of Canada, and to which a salary is attached, or

(c) becomes at any time while he is a Member

(i) an employee of the Crown, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of any of the offices described in the Schedule.

(2) Except as provided in subsection (1),

(a) a person is not liable to disqualification from membership of the Assembly by reason of his holding an office or place of employment from the Crown or any other office or place of employment, and

(b) a person is not ineligible for appointment to or for holding any office or place by reason of his being a Member.

(3) If a person is, immediately before becoming a Member,

(a) an employee of the Crown, whether his employment is permanent or temporary or on a full-time or part-time basis, or

(b) the holder of any of the offices set out in the Schedule,

that person, on becoming a Member, ceases to be an employee of the Crown or the holder of the office, as the case may be, notwithstanding any other Act or law in force in Alberta.

(4) Nothing in this section operates to make a Member liable to disqualification by reason of being appointed to an office described in the Schedule in his capacity as a Minister of the Crown if he receives no remuneration as the holder of that office

other than reasonable travelling and living expenses incurred in the course of serving in that office.

(5) If a place of employment from the Crown is held pursuant to a contract of employment, the employment shall be governed by this section and not by section 35.8.

(See Recommendation 11)

35.7 Disqualifying contracts

(1) A Member is liable to disqualification from membership of the Assembly if, while he is a Member, he or a person directly associated with him becomes a party to a contract within any of the following classes:

(a) a contract under which the Member or the person directly associated with him borrows money from a treasury branch;

(b) a contract under which the Member or the person directly associated with him conveys or agrees to convey to the Crown any interest in land otherwise than

(i) by consenting to the acquisition by the Crown of the interest under section 30 of the *Expropriation Act* and executing a conveyance under that section, or

(ii) with the approval of the Court under an order certifying that the consideration for the conveyance is fair and reasonable;

(c) a contract to which the Crown is also a party and which is for the construction, demolition, alteration or repair of a public work;

(d) a contract under which the Alberta Agricultural Development Corporation lends money to, or guarantees a debt of, the Member or the person directly associated with him;

(e) a contract under which the Alberta Opportunity Company lends money to, or guarantees a debt of, the Member or the person directly associated with him;

(f) a contract to which the Crown is also a party, other than a contract referred to in clauses (a) to (e), if the Member or the person directly associated with the Member received a preference from the Crown in entering into the contract or received a benefit under the contract not available to other members of the public under contracts of the same class.

(2) Notwithstanding subsection (1), a Member is not liable to disqualification from membership of the Assembly in respect of a contract to which that subsection would otherwise apply if

(a) at the time he became a Member, the Member or the person directly associated with him was a party to the contract,

(b) the contract is to be renewed according to its provisions or is to be renegotiated,

(c) the contract is not within any of the classes mentioned in subsection (1)(a) to (e),

(d) the Ethics Commissioner, before the renewal is made or the replacement contract is executed by the Member or the person directly associated with him, gives an opinion that

(i) the provisions of the renewal or the replacement contract are fair and reasonable in the circumstances, having regard to the provisions of the existing or previous contract,

(ii) in the case of a renewal, the renewal will be effected in accordance with the provisions of the contract pertaining to its renewal, and

(iii) the Member or the person directly associated with the Member has not received any preference from the Crown in relation to the renewal or in negotiating the replacement contract and will not receive a benefit under the renewal or replacement contract not available to other members of the public under contract of the same class.

(See Recommendation 11)

35.8 Disqualifying payments

(1) A Member is liable to be disqualified from membership of the Assembly if, while he is a Member, he or a person directly associated with him accepts a payment of public money from the Crown or a person acting on behalf of the Crown otherwise than as permitted by subsection (2).

(2) Subject to this Act, a Member or a person directly associated with him may accept a payment of public money from the Crown or a person acting on behalf of the Crown if

(a) the payment is made to the Member pursuant to Part 3 or 4 or otherwise to him in his capacity as a Member of the Assembly, as a member of the Executive Council or as the holder of an office to which he is elected by the Assembly or appointed by or at the nomination of the Lieutenant Governor in Council or a Minister of the Crown in right of Alberta, and the payment is authorized by or pursuant to

(i) this Act or any other enactment,

(ii) a resolution or order of the Assembly, or

(iii) a supply vote or Heritage Fund vote as defined in the *Financial Administration Act*;

(b) the recipient was, according to the enactment authorizing the payment, entitled to the payment as a matter of right or subject only to compliance with the requirements of that enactment that are conditions precedent to the payment, or

(c) the recipient of the payment

(i) was according to the enactment under which the payment was authorized, eligible to apply for the payment and complied with the requirements of that enactment that were conditions precedent to the payment,

(ii) in respect of his application was given no preference not available to others, and

(iii) received no special benefit in relation to his application or the payment.

(3) This section does not apply to a payment under a contract to which section 35.7 applies.

(See Recommendation 11)

35.9 When person deemed a Member under sections 35.7 and 35.8

If a person ceases to be a Member by reason of dissolution of the Assembly or otherwise and again becomes a Member by reason of being elected in the succeeding general election or by-election, as the case may be, then, for the purposes of sections 35.7 and 35.8, the person is deemed to be a Member during the intervening period.

(See Recommendation 11)

35.10 When disqualification occurs

(1) A Member is not disqualified from membership of the Assembly under this Division until

- (a) the allegation that he is disqualified has been dealt with by the Ethics Commissioner under Division 2.5, and
- (b) The Member has been declared to be disqualified by the Asembly.

(See Recommendation 11)

Division 2.3

Special Duties of Members of the Executive Council

35.11 Publicly traded securities

(1) A Member of the Executive Council shall not own or have a beneficial interest in traded securities issued by public companies or distributing corporations whose interests might be affected by decisions of the Government.

(2) This section does not apply to

- (a) publicly traded securities which a Member has placed in a blind trust, or
- (b) securities in a company or corporation the interests of which, in the opinion of the Ethics Commissioner, are not likely to be affected by decisions of the Government.

(3) If, in the opinion of the Ethics Commissioner,

- (a) divestiture of publicly traded securities will cause financial loss to a Member, and

(b) the public interest does not require divestiture

the Ethics Commissioner may from time to time authorize the Member to retain the securities.

(See Recommendation 12)

35.12 **Businesses and occupations**

(1) A Member of the Executive Council shall not, after the expiration of 60 days after his appointment to the Executive Council or such longer period as the Ethics Commissioner may determine,

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than a social club, religious organization or political party,

which might create or appear to create a conflict between a private interest and the Member's responsibilities as a Member of the Executive Council.

(2) If

(a) a Member has disclosed the material facts to the Ethics Commissioner, and

(b) the Ethics Commissioner is satisfied that an activity mentioned in subsection (1), if carried on in a way approved by the Ethics Commissioner, will not create or appear to create a conflict, the Member may carry on the activity in the way approved by the Ethics Commissioner.

(See Recommendation 13)

Division 2.4

Information and advice about ethical duties

35.13 General information and advice

It is a function of the Ethics Commissioner, having regard to his qualifications and the resources available to him, to promote the understanding by ministers and MLAs of their duties under this Act by

(a) personal discussions with ministers and MLAs individually or collectively, and in particular when interviewing them about disclosure statements,

(b) by commissioning the preparation and dissemination of written information about the duties, and

(c) by continuing contact with party caucuses and advising them as to what programmes they might institute.

(See Recommendation 15)

35.14 Authoritative advice in specific cases

(1) A Member may ask the Ethics Commissioner to give an opinion and recommendations on any matter respecting a duty of the Member under this Act.

(2) The Ethics Commissioner may provide the Member with a written opinion and recommendations, which

(a) shall state the material facts either expressly or by incorporating facts stated by the Member,

(b) shall give the Ethics Commissioner's opinion based upon the facts stated and the duties set out in this Act, and

(c) may give the Ethics Commissioner's opinion based upon such other ethical considerations as the Ethics Commissioner deems appropriate.

(3) An opinion and recommendations under this section is confidential until released by the Member or with the Member's consent.

(4) If a Member has

(a) communicated the material facts to the Ethics Commissioner, and

(b) has complied with any recommendations contained in the opinion and recommendations of the Ethics Commissioner,

no proceedings shall be taken against the Member under this Act by reason only of the facts so communicated and the Member's compliance.

(See Recommendation 16)

Division 2.5

Breaches of duty

35.15 Jurisdiction to investigate and report

(1) The Executive Council may request the Ethics Commissioner to investigate a matter relating to the conduct of a Member of the Executive Council.

(2) The Legislative Assembly may by resolution request the Ethics Commissioner to investigate a matter relating to the conduct of a Member of the Legislative Assembly.

(3) Any person may make an allegation to the Ethics Commissioner that a Member is in breach of a duty under this Act.

(4) The Ethics Commissioner shall investigate and report on a request under subsection (1) or subsection (2).

(5) The Ethics Commissioner

(a) may investigate or report on an allegation under subsection (3), but

(b) shall not do so unless

(i) the allegation is signed by the person who makes it and identifies that person to the satisfaction of the Ethics Commissioner, and

(ii) the Ethics Commissioner is of the view that the allegation justifies requesting comments from the Member.

(6) Where the Ethics Commissioner has reason to believe that a Member has acted or is acting in contravention of advice or recommendations given by the Ethics Commissioner to the Member under section 35.14, the Ethics Commissioner may, upon his own initiative, investigate the circumstances and make a report to the Legislative Assembly.

(See Recommendation 18)

35.16 Investigation and report

(1) Upon receipt of a request or allegation under section 35.15 or having commenced an investigation under section 35.15(6), the Ethics Commissioner may, unless there are no grounds for proceeding further,

(a) send a copy of the allegation to the Member whose conduct is in question, or, where there is no allegation in writing or if he considers it inappropriate to send a copy, send a description of the allegation or of a matter he proposes to investigate under section 35.15(6) sufficient to enable the Member to reply to it, and

(b) invite the Member to comment on any facts alleged and anything arising from the facts.

(2) Upon

(a) receipt of the Member's comments, or

(b) the failure of the Member to provide comments within the time stipulated by the Ethics Commissioner,

the Ethics Commissioner, may, unless he considers that there are no grounds for proceeding further, decide either

(c) to require a preliminary investigation of the facts alleged, or

(d) to order that a formal hearing be held.

(3) Upon receipt of the report of a preliminary investigation, the Ethics Commissioner, unless he considers that there are no grounds for proceeding further, may order that a formal hearing be held.

(4) Upon receipt of the report of a formal hearing, the Ethics Commissioner, unless he considers that there are no grounds for proceeding further, shall deliver a report

(a) to the Premier, if the proceedings were commenced upon the request of the Executive Council, or

(b) to the Speaker of the Legislative Assembly in any other case.

(5) In a report to the Speaker under subsection (4), the Ethics Commissioner shall set out

(a) the facts found by him, and

(b) his opinion as to whether or not the Member has committed a breach of his duties under this Act, and, if so,

(i) the nature of the breach, and

(ii) the Ethics Commissioner's recommendation for the sanction, if any, which the Legislative Assembly should impose on the Member for the breach.

(6) The Ethics Commissioner may recommend that no sanction or a lesser sanction for a breach be imposed if

(a) in his opinion, the breach was trivial, inadvertent or committed in good faith, or

(b) if the Member carries out recommendations made by the Ethics Commissioner for the rectification of the breach.

(7) The Ethics Commissioner

(a) shall make available to the public a report delivered under subsection(4), but

(b) may deliver a copy of the report

  (i) to the Premier, if the proceedings were commenced upon the request of the Executive Council, or

  (ii) to the leader in the Legislative Assembly of the political party to which the Member belongs

3 days before making it available to the public.

(See Recommendation 19)

35.17 Conduct of preliminary investigation and formal hearing

(1) The Ethics Commissioner may

(a) retain

  (i) a preliminary investigator to conduct a preliminary investigation, or

  (ii) a hearing officer to conduct a formal hearing, or

(b) if he considers it expedient,

  (i) appoint a member of his staff to conduct a preliminary investigation, or

  (ii) himself act as hearing officer to conduct a formal hearing.

(2) If the Ethics Commissioner so directs, a hearing officer has the powers of a commissioner under the *Public Inquiries Act*.

(3) The Ethics Commissioner

(a) is not bound to accept the report and recommendations of a preliminary investigator or hearing officer, and

(b) is under a duty to form his own conclusions in light of reports and other information properly before him.

(See Recommendation 19)

35.18 Termination or abbreviation of proceedings

(1) At any time before the commencement of a formal hearing, the Ethics Commissioner may

(a) decide that no further action in connection with a matter is justified, and

(b) close his file, upon notice to the Executive Committee, the Legislative Assembly, or the person who made the allegation under investigation, as the case may, of his decision.

(2) At any time before the commencement of a formal hearing, the Ethics Commissioner, may decide to dispense with a preliminary investigation, a formal hearing, or both, and proceed directly to a report and recommendations to the Legislative Assembly, upon

(a) receiving a request to do so from the Member whose conduct is in question, and

(b) being satisfied that, having regard to the evidence in his possession, a preliminary investigation or hearing, as the case may be, in not required.

(See Recommendation 20)

35.19 Procedural safeguards

(1) At every stage of a proceeding under section 35.16, the Member whose conduct is in question shall be given

(a) information adequate to enable him to answer any allegations made against him,

(b) adequate notice of proceedings, and

(c) a full opportunity to meet allegations against him and to put forward his own case in person or by counsel.

(See Recommendation 20)

(2) Before taking a further step, the Ethics Commissioner

(a) shall make available to the Member a copy of the report and recommendations of

(i) the preliminary investigator who conducts a preliminary investigation, or

(ii) the hearing officer who conducts a formal hearing, and

(b) shall give the Member an opportunity to make representations to the Ethics Commissioner thereon.

(See Recommendation 20)

35.20 Proceedings of the Legislative Assembly

(1) Upon receiving a report from the Ethics Commissioner under section 35.16(4), the Speaker shall refer the report to the committee of the Legislative Assembly designated to receive and

deal with such reports, or, if there is no such committee, to the Legislative Assembly.

(2) The Legislative Assembly shall deal with a report of the Ethics Commissioner

(a) if the Legislature is sitting when the report is delivered, within 60 days after the delivery of the report, or

(b) if the Legislature is not sitting when the report is delivered, within 30 days of the commencement of the next regular sitting.

(3) The proceedings of the Legislative Assembly shall be governed by the rules of the Legislative Assembly.

(See Recommendation 19)

35.21 Powers of the Legislative Assembly

(1) After receiving a report and recommendations from the Ethics Commissioner under this Part, the Legislative Assembly may

(a) accept or reject the findings of the Ethics Commissioner, and

(b) impose

(i) the penalty recommended by the Ethics Commissioner,

(ii) another penalty under subsection (2), or

(iii) no penalty.

(2) In proceedings under this Part, the Legislative Assembly may

(a) reprimand a Member,

(b) impose a penalty upon a Member in an amount determined by order of the Assembly,

(c) suspend a Member's right to sit and vote in the Assembly for a stated period or until the fulfilment of a condition in the order, or

(d) expel a Member.

(See Recommendation 19)

35.22 Confidentiality

(1) Except as provided in this section, the Ethics Commissioner, the Ethics Commissioner's staff and a preliminary investigator shall maintain the confidentiality of all information and allegations which come to their knowledge in the exercise of their functions.

(2) All such information and allegations may be disclosed to the Member whose conduct is in question in a proceeding;

(3) The fact that a preliminary investigation has been ordered, and such information as is necessary to enable the preliminary investigator to obtain information from others, may be disclosed for that purpose;

(4) A formal hearing shall be held in public unless the Ethics Commissioner or hearing officer, in the interests of justice, decides that it shall be held *in camera*;

(5) The Ethics Commissioner's report may disclose any or all information and evidence given at a formal hearing, or, if there has not been a hearing, such information and evidence in his possession as he thinks desirable in order to explain his findings.

(6) The Ethics Commissioner may give to appropriate authorities for investigation information and evidence which may establish a criminal offence or breach of statute.

(See Recommendation 20)

35.23 Protection of complainants and witnesses

(1) No action lies against

- (a) a preliminary investigator,
- (b) a hearing officer, or
- (c) a member of the staff of the Ethics Commissioner, a preliminary investigator or hearing officer

for anything done or omitted in a proceeding under this Part.

(2) No action lies against a person

- (a) for making an allegation to the Ethics Commissioner about the conduct of a Member, or
- (b) for providing information or giving evidence to the Ethics Commissioner or preliminary investigator or at a formal hearing.

(See Recommendation 3)

35.24 Contraventions

A failure to comply with Division 2, 2.1 or 2.2 is not an offence against this Act.

Division 2.6

Restrictions on activities of former Members and others

35.25 Restrictions on former Members

(1) Except in accordance with an exemption or variation under subsection (2) or a ruling under subsection (3), no person who was a Member of the Executive Council shall, within 12 months after ceasing to hold that office,

(a) on behalf of himself or any other person, solicit or accept a contract or benefit from a department or agency of the Government with which the former minister had significant official dealings within the last year of service in his office,

(b) accept employment with a person or entity, or appointment to the board of directors or equivalent body of an entity, with which the former Member had significant official dealings during his last year of service in his office, or

(c) act on a commercial basis in connection with any ongoing matter in connection with which the former Member, while in office, acted for or advised a department or agency involved in the matter.

(2) Subsection (1) does not apply to an activity

(a) if

(i) the Ethics Commissioner has exempted the activity from the operation of subsection (1), and

(ii) the former Member observes and performs all terms and conditions upon which the Ethics Commissioner has exempted the activity, or

(b) if the Ethics Commissioner has given an opinion that the activity as carried on by the Minister is not an activity prohibited by subsection (1)

(3) A former Member who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

(See Recommendations 22 and 23)

35.26 Other restrictions

(1) No Member of the Executive Council or employee of the Government shall conduct official business of the Government with a former Member of the Executive Council while knowing that the former Member is acting in contravention of section 35.25.

(2) A person who contravenes this section is guilty of an offence.

(See Recommendation 24)

3. *Part 2 is amended by inserting the following section immediately before section 22:*

21.1 Interpretation

In this Part,

(a) "Crown" means the Crown in right of Alberta and includes a Provincial agency;

(b) "Member" includes a Member of the Executive Council whether or not the Member is a Member of the Legislative Assembly;

(c) "Provincial agency" means a Provincial agency as defined in the *Financial Administration Act* but does not include a corporation enumerated in section 2(5) of that Act;

(d) "publicly-traded securities" means

(i) securities of a corporation that are listed or posted for trading on a recognized stock exchange in Canada or the United States of America, or

(ii) securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public;

(d) "senior officer" means, with reference to a corporation,

(i) the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or

(ii) any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i);

(e) "spouse"

(i) includes a person with whom a Member is living in a conjugal relationship though not married to him or her, but

(ii) does not include a spouse with whom a Member has entered into a separation agreement or a spouse whose mutual support and property rights and obligations against and to the minister and MLA have been dealt with by a court order.

(2) For the purposes of this Part, shares of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities are deemed to be shares that are part of a distribution to the public if those other securities were part of a distribution to the public.

(3) Subject to subsection (4), for the purposes of this Part, shares of a corporation

(a) are part of a distribution to the public if, in respect of the shares, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada or a province or a jurisdiction outside Canada, or

(b) are deemed to be part of a distribution to the public if the shares have been issued and a filing referred to in clause (a) would be required if the shares were being issued currently.

(4) On the application of a Member who is a beneficial owner of shares of a corporation, the Ethics Commissioner may determine, for the purposes of this Part only, whether or not the shares of the corporation are or were part of a distribution to the public.

(5) For the purposes of this Part, a trust is a "blind trust" if it meets the following criteria:

(a) a Member is the settlor of the trust;

(b) the trustee is

(i) engaged in the business of managing investments for other persons,

(ii) approved as trustee by the Ethics Commissioner after satisfying himself that there is no relationship between the Member and the trustee which would or would appear to affect the discharge of the trustee's duties;

(c) assets included by the Member in the trust property are publicly traded shares approved for inclusion by the Ethics Commissioner;

(d) the terms of the trust, in the opinion of the Ethics Commissioner,

  (i) give the trustee sole power over investment decisions, and

  (ii) preclude the Member from having any knowledge of the specific assets in the trust at any time after a deposit of assets in the trust.

(6) The Provincial Treasurer shall, from money appropriated for the purpose, pay a Member such reasonable costs for the establishment, maintenance and termination of a blind trust as are approved by the Commission.

APPENDIX 1

TERMS OF REFERENCE

CONFLICT OF INTEREST REVIEW PANEL

OIC 425/89

1(1) There is hereby established a Conflict of Interest Review Panel.

(2) The Review Panel has the following terms of reference:

(a) to review Alberta legislation and guidelines that relate to conflict of interest rules applicable to Members of the Executive Council, Members of the Legislative Assembly and senior public servants in Alberta;

(b) to review in particular the ownership by Members of the Executive Council, Members of the Legislative Assembly and senior public servants of shares of the Alberta Energy Company Ltd.;

(c) to comment on and make recommendations based on its findings.

2 The Review Panel shall consist of

(a) His Honour, Chief Judge Wachowich, Chairman;

(b) Dr. Walter Buck;

(c) Mr. Frank King.

APPENDIX 2

PROCEEDINGS OF THE REVIEW PANEL

The Conflict of Interest Review Panel was appointed on August 3, 1989 by an Order in Council which appears in the preceding Appendix.

The Review Panel held its first meeting on August 11, 1989. Mr. W.H. Hurlburt, Q.C. was retained as Counsel and Mr. V.K. Bhardwaj, Legal Counsel to the Chief Judge, was named Research Counsel and Administration Coordinator for the Review Panel.

The Review Panel then commenced a literature search and review much of which is reproduced later on in Appendix 4 of this report. Concurrently, the Panel published the following notification once in all English daily and weekly newspapers of Alberta.

INVITATION FOR SUBMISSIONS

Conflict of Interest Review Panel

The Lieutenant Governor in Council has appointed a Conflict of Interest Review Panel by Order-in-Council 425/89 dated August 3, 1989. The Terms of Reference of the Panel are:

(a) to review Alberta legislation and guidelines that relate to conflict of interest rules applicable to Members of the Executive Council, Members of the Legislative Assembly and senior public servants in Alberta;

(b) to review in particular the ownership by Members of the Executive Council, Members of the Legislative Assembly and senior public servants of shares of the Alberta Energy Company Ltd.;

(c) to comment on and make recommendations based on its findings.

The Review Panel invites written submissions from interested individuals or groups on (a) and (b) above. All submissions should be forwarded before the 6th of October 1989 to:

The Chairman
Conflict of Interest Review Panel
6th Floor, Law Courts Building
1A Sir Winston Churchill Square
EDMONTON, Alberta
T5J 0R2

For further information, phone 427-6330

Individual letters soliciting written submissions were sent out to all currently serving cabinet ministers, MLAs and senior public servants. As well, ex-Premiers Mr. Manning and Mr. Lougheed were invited to give their views on the subject.

The Review Panel received six letters of response from the general public. Out of these six, two were job applications and two were beyond the terms of reference of the Panel: one being concerned with conflict of interest in Municipal Districts and the other with MLAs salary.

A submission was received from the Edmonton Chamber of Commerce.

Eleven cabinet ministers acknowledged receiving the Panel's invitation and two cabinet ministers sent in written submissions.

There was no individual response from any of the MLAs. However all three parties in the Legislature responded by submitting written responses of their caucuses. Each of the party caucuses then made an oral presentation to the Review Panel and answered questions. The Progressive Conservative Party was represented by Mr. Brian Evans, M.L.A., Banff-Cochrane, and met with the Review Panel on December 15. The Official Opposition Party, the New Democrats, were represented by Ms. Pam Barrett, M.L.A., Edmonton-Highlands, and met with the Panel on December 15. The Liberal Party was represented by Mr. Sheldon Chumir, M.L.A., Calgary-Buffalo and met with the Panel on December 18 in Calgary. The Review Panel are grateful to the caucuses for the amount of work done and the articulate and principled explanations given by the caucus representatives.

The Review Panel also held consultation with ex-Premiers, Mr. Manning and Mr. Lougheed, as well as with ex-Ministers, Mr. Shaben, Mr. Stevens, and Mr. Farran who is currently the Chairman of the Racing Commission.

The Review Panel travelled to Ottawa and Toronto to see first-hand the two most extensive operational systems of conflict of interests in Canada. The federal conflict of interest system is managed by the Assistant Deputy Registrar General of Canada. The Review Panel had a valuable half-day's meeting in the incumbent, Mr. Jean-Pierre Kingsley's office, and Mr. Kingsley came to Edmonton and spent a further half day with the Review Panel at a late stage of our deliberation and made valuable contributions on both occasions. The Review Panel also consulted with the following in Ottawa:

> Mr. John L. Manion, Q.C. Principal, Canadian Centre for Management Development, Ottawa;
>
> Mr. Gaylen Duncan, Vice-President, Canada Mortgage & Housing Corporation, Ottawa;

Both Mr. Manion and Mr. Duncan were able to give the Review Panel the benefit of long experience with conflicts of interests rules in the federal government.

The Review Panel met the Honourable Gregory T. Evans, Commissioner on the one-man Commission on Conflict of interest in Ontario, for half a day, and obtained valuable insights into the working of the present Ontario system.

The Review Panel contacted Mr. William Pound, Executive Director of the National Conference of State Legislatures of the United States situated in Denver, Colorado and obtained helpful advice. Indeed, through him the Review Panel obtained names of very knowledgeable persons in the area of conflict of interest. Fortunately for the Review Panel, the annual Conference on Governmental Ethics Laws was being held in New Orleans from December 6 to 8, 1989. The Review Panel attended this Conference, but more important, was able to consult privately and at no extra cost, with the keynote speaker of the Conference as well as five other knowledgeable persons with great experience in this area in the United States who were able to give a complete picture of United States experience and practices. These were:

> Professor Michael Josephson, Founder and President, Joseph and Edna Josephson Institute for the Advancement of Ethics, Marina Del Rey, California. (Keynote speaker at the Conference).
>
> Ms. Susan C. Biemesderfer, Policy Specialist, National Conference of State Legislatures, Denver, Colorado.
>
> Mr. John Larsen, Executive Director, Illinois Board of Ethics, Chicago, Illinois.

Ms. Jane Ley, Deputy General Counsel, United States Office of Government Ethics, Washington, D.C.

Mr. Mark Davis, Counsel, Committee on Standards of Official Conduct, House of Representatives, Washington, D.C.

Mr. R. Roth Judd, Executive Director, Wisconsin State Ethics Board, Madison, Wisconsin.

The Review Panel also received useful material from Ms. Amy Schwartz, Associate Counsel to President Bush.

The Review Panel were given a draft of research being done by Mr. Mark O. Ruttan for his master's degree thesis *Managing Conflicts of Interest*. This included a comprehensive and accurate description of conflicts of interests system in Canada which we have found very helpful. We also received a great quantity of important material and comments prepared by Ms. G.P. Wallace for Mr. E.N. Hughes, Q.C., Deputy Attorney General of British Columbia.

The Review Panel met with Dr. Barry Mellon, the Deputy Minister of the Executive Council and Mr. James Dixon, the Public Service Commissioner of Alberta, to discuss the situation as regards senior public servants. The Review Panel also received helpful suggestions from nine of the written responses of senior public servants to its invitation for written submissions. In all, thirty-seven responses were received from senior public servants.

The Review Panel had a useful meeting with Mr. John A. Scrimshaw, Executive Assistant to the Government House Leader, Mr. John Szumlas, Executive Assistant to the Solicitor General, and Ms. Sheena E. Cox, Executive Secretary to the Premier.

Overall, the Review Panel met twenty-two times to pore over, discuss, formulate and reformulate the views and recommendations in this report.

APPENDIX 3

ALBERTA LEGISLATION AND GUIDELINES

LEGISLATIVE ASSEMBLY ACT

CHAPTER L-10.1

PART 1
THE LEGISLATIVE ASSEMBLY

Division 2
Assembly's Privileges, Immunities and Powers

Jurisdiction of the Assembly

8 The Assembly has exclusive jurisdiction in respect of

(a) the determination of the lawfulness of its proceedings, and

(b) the regulation of its proceedings and the conduct of its business and affairs.

Privileges, immunities and powers generally

9(1) In addition to the privileges, immunities and powers respectively conferred on them by this Act, the Assembly and its Members, and the committees of the Assembly and their members, have the same privileges, immunities and powers as those held respectively by the House of Commons of the Parliament of the United Kingdom, the members of that House, the committees of that House and the members of committees of that House at the time of the passing of the *Constitution Act*, 1867.

(2) The privileges, immunities and powers referred to in subsection (1)

(a) are part of the public and general law of Alberta,

(b) need not be pleaded, and

(c) shall be judicially noticed in all courts in Alberta.

Breaches of privilege and contempts

10(1) The Assembly may inquire into, adjudicate and punish breaches of the privileges of the Assembly and contempts of the Assembly.

(2) Without restricting the generality of subsection (1), the following acts constitute breaches of privilege or contempts to which that subsection applies:

(a) an assault, insult or libel on a Member;

(b) obstructing, threatening or attempting to force or intimidate a Member in any matter relating to his office;

(c) the offering to, or acceptance by, a Member of

(i) a bribe to influence him in his conduct as a Member, or

(ii) a fee or reward in respect of drafting, advising on, revising, promoting or opposing any bill, resolution, petition or other matter submitted to or intended to be submitted to the Assembly or a committee of the Assembly;

(d) an assault on or interference with the Speaker, Deputy Speaker or Deputy Chairman or other Member appointed by the Assembly to an office of the Assembly, or with an officer or employee of the Legislative Assembly Office in the execution of his duties;

(e) tampering with a witness with regard to evidence given or to be given by him before the Assembly or a committee of the Assembly;

(f) giving false evidence or prevaricating or misbehaving in giving evidence or refusing to give evidence or to produce papers before the Assembly or a committee of the Assembly;

(g) disobedience to a warrant requiring the attendance of a witness before the Assembly or a committee of the Assembly, refusal or neglect to obey a warrant issued pursuant to section 14(2), or failure or refusal to give aid and assistance when it is commanded under section 14(3);

(h) forging or falsifying

(i) a record of the Assembly or of a committee of the Assembly, or

(ii) a document presented to or filed with, or to be presented to or filed with, the Assembly or a committee of the Assembly;

(i) the setting or subscribing by any person of the name of another person to any document presented or to be presented to the Legislative Assembly or a committee of the Assembly with intent to deceive;

(j) presenting to the Assembly or a committee of the Assembly a document referred to in clause (h) or (i) with intent to deceive;

(k) taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a Member in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or anything said by him, before the Assembly or a committee of the Assembly;

(l) causing or effecting the arrest, detention or molestation of a Member of the Assembly for any cause of a civil nature;

(m) a contravention of this Act or of an order of the Assembly or a committee of the Assembly.

Order of punishment

11(1) Every person who is found by the Assembly to have committed a breach of privilege or a contempt under section 10, in addition to any other penalty or punishment to which he may be subject by law, is liable to the following:

(a) imprisonment for such period of time during the session of the Assembly then being held that the Assembly by order determines;

(b) a penalty in an amount determined by order of the Assembly;

(c) in the case of a Member, the suspension of his right to sit and vote in the Assembly for a stated period or until the fulfilment of a condition in the order.

(2) If the Legislative Assembly makes an order under subsection (1)(a), the Speaker shall issue his warrant to the Sergeant-at-Arms, a peace officer or the director of a correctional institution as defined in the *Corrections Act* to cause the person against whom the order is made to be arrested and taken into and kept in custody in accordance with the order.

Assembly as a court

12(1) The Assembly is a court for the purpose of exercising its powers and jurisdiction under sections 10 and 11 and its decisions and orders under those sections are final.

(2) A decision or order of the Assembly under section 10 or 11 does not affect the liability of the offender to prosecution and punishment according to law and independently of this Act.

PART 2
MEMBERSHIP OF THE ASSEMBLY

Division 1
Disqualification

Interpretation

23(1) In this Division,

(a) "Crown" means the Crown in right of Alberta and includes a Provincial agency;

(b) "Provincial agency" means a Provincial agency as defined in the *Financial Administration Act* but does not include a corporation enumerated in section 2(5) of that Act;

(c) "publicly-traded shares" means

(i) shares of a corporation that are listed or posted for trading on a recognized stock exchange in Canada or the United States of America, or

(ii) shares of a corporation that has more than 15 shareholders and any of whose issued shares, or securities which may or might be exchanged for or converted into shares, were part of a distribution to the public;

(d) "senior officer" means, with reference to a corporation,

(i) the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or

(ii) any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i).

(2) For the purposes of this Division, shares of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities are deemed to be shares that are part of a distribution to the public if those other securities were part of a distribution to the public.

(3) Subject to subsection (4), for the purposes of this Division, shares of a corporation

(a) are part of a distribution to the public if, in respect of the shares, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada or a province or a jurisdiction outside Canada, or

(b) are deemed to be part of a distribution to the public if the shares have been issued and a filing referred to in clause (a) would be required if the shares were being issued currently.

(4) On the application of a Member who is a beneficial owner of shares of a corporation, the Court may determine, for the purposes of this Division only, whether or not the shares of the corporation are or were part of a distribution to the public.

Persons directly associated with a Member

24(1) For the purposes of this Division, a person is directly associated with a Member if that person is

(a) the Member's spouse except where the Member and the spouse are living apart and are separated pursuant to a judicial separation or written separation agreement;

(b) a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation;

(c) a corporation carrying on business or activities for profit or gain and the Member is the beneficial owner of shares of the corporation other than

(i) publicly-traded shares, or

(ii) shares held in a blind trust;

(d) a partnership having not more than 20 partners

(i) of which the Member is a partner, or

(ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c);

(e) a person or group of persons acting as the agent of the Member and having actual authority in that capacity from the Member.

(1.1) Subsection (1)(c) does not apply where the corporation is

(a) an association as defined in the *Co-operative Associations Act*,

(b) a credit union incorporated under the *Credit Union Act*,

(c) a co-operative credit society incorporated by or under an Act of the Parliament of Canada, or

(d) The United Farmers of Alberta Co-Operative Limited.

(2) For the purposes of this Division, a trust is a "blind trust" if it meets the following criteria:

(a) the Member is the settlor of the trust;

(b) the trustee is not

(i) the Member,

(ii) a person directly associated with the Member, or

(iii) a corporation of which the Member is an employee;

(c) the terms of the trust

(i) authorize and direct the trustee t deal with the trust property without first informing the Member or otherwise communicating with the Member in respect of the trustee's transactions respecting the trust property, and

(ii) prohibit the Member from having any control over or involvement with the administration of the trust property;

(d) the terms of the trust require that the trustee shall not identify to the Member

(i) any of the assets included in the trust property, or

(ii) the sources of income of the trust property other than by describing the general nature of the classes of income;

(e) the terms of the trust, if they permit the Member to appoint another person as his agent to examine or audit the records of the trustee and to sue on his behalf for a breach of trust or for any accounting, prohibit that agent from disclosing any information to the Member that the trustee himself is prohibited from disclosing to the Member in relation to the trust property.

Loss of citizenship

25 A Member is disqualified from membership of the Assembly if he ceases to be a Canadian citizen.

Disqualification in relation to election financial statements

26 A person is disqualified from membership of the Assembly if

(a) the Speaker has laid a report before the Assembly pursuant t section 36(1) of the *Election Finances and Contributions Disclosure Act*,

(b) that person was the registered candidate or the chief financial officer of the registered candidate referred to in the report, and

(c) the financial statement to which the report relates has not been filed with the Chief Electoral Officer and the Court has not dispensed with compliance with section 35 of that Act by an order under section 36(3)(a) of that Act.

Disqualifying offices

27(1) A person is disqualified from membership of the Assembly if that person

(a) is at the time he becomes a Member, or becomes at any time while he is a Member, a member of the Senate or House of Commons of Canada,

(b) is at the time he is sworn in as a Member, or becomes at any time after he is sworn in as a Member,

(i) an employee of the Crown in right of Canada, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of an office to which he is appointed by or at the nomination of the Governor in Council or a Minister of the Crown in right of Canada, and to which a salary is attached,

or

(c) becomes at any time while he is a Member

(i) an employee of the Crown, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of any of the offices described in the Schedule.

(2) Except as provided in subsection (1),

(a) a person is not disqualified from membership of the Assembly by reason of his holding an office or place of employment from the Crown or any other office or place of employment, and

(b) a person is not ineligible for appointment to or for holding any office or place by reason of his being a Member.

(3) If a person is, immediately before becoming a Member,

(a) an employee of the Crown, whether his employment is permanent or temporary or on a full-time or part-time basis, or

(b) the holder of any of the offices set out in the Schedule,

that person, on becoming a Member, ceases to be an employee of the Crown or the holder of the office, as the case may be, notwithstanding any other Act or law in force in Alberta.

(4) Nothing in this section operates to make a Member liable to disqualification by reason of being appointed to an office described in the Schedule in his capacity as a Minister of the Crown if he receives no remuneration as the holder of that office other than reasonable travelling and living expenses incurred in the course of serving in that office.

(5) If a place of employment from the Crown is held pursuant to a contract of employment, the employment shall be governed by this section and not by section 28.

Disqualifying contracts

28(1) A Member is disqualified from membership of the Assembly if, while he is a Member, he or a person directly associated with him becomes a party to a contract within any of the following classes:

(a) a contract under which the Member or the person directly associated with him borrows money from a treasury branch;

(b) a contract under which the Member or the person directly associated with him conveys or agrees to convey to the Crown any interest in land otherwise than

(i) by consenting to the acquisition by the Crown of the interest under section 30 of the *Expropriation Act* and executing a conveyance under that section, or

(ii) with the approval of the Court under an order certifying that the consideration for the conveyance is fair and reasonable;

(c) a contract to which the Crown is also a party and which is for the construction, demolition, alteration or repair of a public work;

(d) a contract under which the Alberta Agricultural Development Corporation lends money to, or guarantees a debt of, the Member or the person directly associated with him;

(e) a contract under which the Alberta Opportunity Company lends money to, or guarantees a debt of, the Member or the person directly associated with him;

(f) a contract to which the Crown is also a party, other than a contract referred to in clauses (a) to (e), if the Member or the person directly associated with the Member received a preference from the Crown in entering into the contract or received a benefit under the contract not available to other members of the public under contracts of the same class.

(2) Notwithstanding subsection (1), a Member may not be declared disqualified from membership of the Assembly in respect of a contract to which that subsection would otherwise apply if

(a) at the time he became a Member, the Member or the person directly associated with him was a party to the contract,

(b) the contract is to be renewed according to its provisions or is to be renegotiated,

(c) the contract is not within any of the classes mentioned in subsection (1)(a) to (e),

(d) the Court, before the renewal is made or the replacement contract is executed by the Member or the person directly associated with him, makes an order certifying its opinion that

(i) the provisions of the renewal or the replacement contract are fair and reasonable in the circumstances, having regard to the provisions of the existing or previous contract,

(ii) in the case or a renewal, the renewal will be effected in accordance with the provisions of the contract pertaining to its renewal, and

(iii) the Member or the person directly associated with the Member has not received any preference from the Crown in relation to the renewal or in negotiating the replacement contract and will not receive a benefit under the renewal or replacement contract not available to other members of the public under contract of the same class.

Disqualifying payments

29(1) A Member is disqualified from membership of the Assembly if, while he is a Member, he or a person directly associated with him accepts a payment of public money from the Crown or a person acting on behalf of the Crown otherwise than as permitted by subsection (2).

(2) Subject to this Act, a Member or a person directly associated with him may accept a payment of public money from the Crown or a person acting on behalf of the Crown if

(a) the payment is made to the Member pursuant to Part 3 or 4 or otherwise to him in his capacity as a Member of the Assembly, as a member of the Executive Council or as the holder of an office to which he is elected by the Assembly or appointed by or at the nomination of the Lieutenant Governor in Council or a Minister of the Crown in right of Alberta, and the payment is authorized by or pursuant to

(i) this Act or any other enactment,

(ii) a resolution or order of the Assembly, or

(iii) a supply vote or Heritage Fund vote as defined in the *Financial Administration Act*;

(b) the recipient was, according to the enactment authorizing the payment, entitled to the payment as a matter of right or subject only to compliance with the requirements of that enactment that are conditions precedent to the payment, or

(c) the recipient of the payment

(i) was according to the enactment under which the payment was authorized, eligible to apply for the payment and complied with the requirements of that enactment that were conditions precedent to the payment,

(ii) in respect of his application was given no preference not available to others, and

(iii) received no special benefit in relation to his application or the payment.

(3) This section does not apply to a payment under a contract to which section 28 applies.

When person deemed a Member under sections 28 and 29

30 If a person ceases to be a Member by reason of dissolution of the Assembly or otherwise and again becomes a Member by reason of being elected in the succeeding general election or by-election, as the case may be, then, for the purposes of sections 28 and 29, the person is deemed to be a Member during the intervening period.

Disclosure and annual reports

31(1) Every person who is a Member at the date of the coming into force of this section shall, not later than November 30, 1983, furnish to the Clerk a return showing

(a) the name and address of each person with whom he was directly associated on April 1, 1983 and of the persons with whom he became associated after that date and before the date of the return, and

(b) if the Member's direct association with any person referred to in clause (a) terminated before the date of the return, the date of the termination.

(2) Every person who becomes a Member after the commencement of this section shall, within 90 days after the day on which he becomes a Member, furnish to the Clerk a return showing

(a) the name and address of each person with whom the Member was directly associated on the day he became a Member and with whom he became directly associated after that date and before the date of the return,

(b) if the Member's direct association with any person referred to in clause (a) terminated before the date of the return, the date of the termination.

(3) Every Member shall furnish to the Clerk

(a) a return showing

(i) the name and address of each person with whom the Member became directly associated on or after the date of his initial return under subsection (1) or (2), and

(ii) the date on which the direct association began, and

(b) a return showing the date on which his direct association with any person terminated, within 30 days after that date.

(4) Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,

(a) he shall, within 30 days after ceasing to be a Member, furnish a return to the Clerk showing

(i) the name and address of each person with whom he became directly associated or with whom he ceased to be directly associated on or after the date of his last return under this section, and

(ii) the date on which the direct association began or terminated, as the case may be,

and

(b) if he again becomes a Member in the succeeding general election or by-election, as the case may be, he shall, within 30 days after he again becomes a Member, furnish a return to the Clerk showing

(i) the name and address of each person with whom he became directly associated or with whom he ceased to be directly associated in the intervening period, and

(ii) the date on which the direct association began or terminated, as the case may be.

(5) In a return under this section, a Member is not required to show the name and address of any person who is or was directly associated with him by reason of section 24(1)(e) unless that person, during the period of the direct association and as the agent of the Member with actual authority from the Member,

(a) became a party to a contract to which the Crown was also a party, or

(b) received a payment of public money from the Crown or from a person acting on behalf of the Crown, otherwise than pursuant to a contract.

(6) The Provincial Treasurer shall, after the end of each Government fiscal year, prepare a report sowing in respect of each person who was a Member during that fiscal year

(a) the names of the persons directly associated with the Member in that fiscal year and the period of the direct association, as indicated by the returns furnished by the Member pursuant to this section,

(b) information relating to payments made by the Crown to the Member in that fiscal year, and

(c) information relating to payments made by the Crown in that fiscal year to the respective persons directly associated with the Member in that fiscal year, as indicated by the returns furnished by the Member pursuant to this section.

(7) Each Provincial agency shall, in accordance with the directions of the Provincial Treasurer, furnish to the Provincial Treasurer after the end of each Government fiscal

year, such information as the Provincial Treasurer requires for the purposes of his report under subsection (6) for that fiscal year insofar as it relates to payments made by that Provincial agency in that fiscal year to Members and to the persons directly associated with Members according to the returns furnished under this section.

(8) The Provincial Treasurer, in providing the information referred to in subsection (6)(b) and (c) in a report under that subsection,

(a) may classify payments in any manner he considers appropriate,

(b) shall show in respect of each class of payments the aggregate amount of the payments of that class made to each Member and to each person directly associated with him in the fiscal year, and

(c) shall show in respect of each person who was a Member in the fiscal year to which the report relates the aggregate amount of all payments of all classes made to that Member and the aggregate amount of *all* payments of all classes made to each person directly associated with the Member in the fiscal year.

(9) A report prepared under subsection (6) shall not include

(a) payments made to or on behalf of the Member pursuant to Part 3 or 4,

(b) payments required t be included in a report under section 43,

(c) payment of benefits under the *Alberta Health Care Insurance Act*,

(d) payments of social allowances or handicap benefits under the *Social Development Act*,

(e) payment of handicap benefits under the *Assured Income for the Severely Handicapped Act*,

(f) payment under the *Senior Citizens Benefits Act*,

(g) pensions under the *Widows' Pension Act*,

(h) compensation paid under the *Workers' Compensation Act* or *Blind Workers' Compensation Act*,

(i) payment made by way of student financial assistance under the *Students Finance Act*,

(j) senior citizen renter assistance grants under the *Property Tax Reduction Act* and homeowner refunds under that Act to homeowners who are 65 years of age or older,

(k) repealed 1987 c35 s2,

(l) payments made by way of refunds, or

(m) any other class of payment by the Crown, if the disclosure in the report of the identity of the recipients would contravene any law in force in Alberta that contains confidentiality requirements in respect of that class of payments.

(10) When a report under subsection (6) is prepared, the Provincial Treasurer shall lay the report before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

When disqualification occurs

32(1) A Member is not disqualified from membership of the Assembly under section 25 until the Court, in an action under section 34, makes a finding that the Member is disqualified.

(2) A Member is not disqualified from membership of the Assembly under section 26, 27, 28 or 29 until

(a) the Court makes a finding that the Member is disqualified in a judgment made under section 33(5) or 34, and

(b) the Member has been declared disqualified by the Assembly pursuant to section 35.

Application to Court for advice and directions

33(1) A Member may apply ex parte to the Court for the advice and direction of the Court

(a) as to whether or not an existing or proposed contract is one in respect of which he is disqualified from membership of the Assembly under section 28, or

(b) as to whether or not a payment he or a person directly associated with him has received or is about to receive is one in respect of which he would be liable to be disqualified from membership of the Assembly under section 29.

(2) The Court shall state its advice in an order and a certified copy of the order together with the Court's reasons shall be delivered to the Clerk of the Assembly.

(3) If the advice of the Court is that an existing contract or a payment already received, as the case may be, is one in respect of which the Member is disqualified from membership of the Assembly under section 28 or 29, the order of the Court may also

(a) in the case of an existing contract, give directions to the Member, with or without conditions, as to how the Member may remove the cause of disqualification and prescribing the time within which the Member must do so, or

(b) in the case of a payment, give directions to the Member, with or without conditions, as to the repayment of the money and prescribing the time within which the repayment must be made.

(4) The Court may from time t time, with or without conditions, extend a period of time prescribed pursuant to subsection (3)(a) or (b).

(5) If a Member does not file with the Court evidence satisfactory to the Court that he has complied with directions of the Court given pursuant to subsection (3) within the time prescribed by the order or any extension of that time given under subsection (4), the Court may make a judgment finding that the Member is disqualified under section 28 or 29, as the case may be, by reason of the contract or payment, and giving the reasons for the finding.

(6) When a judgment is entered pursuant to subsection (5), a certified copy of it shall be delivered to the Clerk of the Assembly.

(7) Where a judgment entered under subsection (5) is appealed, the Registrar of the Court of Appeal

(a) shall deliver a certified copy of the judgment and reasons of the Court of Appeal to the Clerk of the Assembly, or

(b) if the appeal is abandoned, shall give written notice of the abandonment to the Clerk of the Assembly.

(8) No proceeding under this section and no order under subsection (3)

(a) operates as a bar to any action under section 34 or to any proceedings in the Assembly under section 35, or

(b) is binding on the Court in an action under section 34 or on the Assembly in proceedings under section 35.

(9) The Clerk of the Assembly shall maintain a registry of the orders and judgments delivered to him under this section and section 34.

Action for finding of disqualification

34(1) An action for a finding that a Member is disqualified under section 25, 26, 27, 28 or 29 may be commenced in the Court by any person who, if the date on which the action is commenced were the polling day for a general election under the *Election Act*, would be eligible t vote at that election.

(2) In an action under this section, the statement of claim shall

(a) be filed in a judicial district in which all or part of the Member's electoral division is located,

(b) show the Member concerned as the sole defendant,

(c) state the grounds of disqualification relied on by the plaintiff, and

(d) ask the Court to find that the Member is disqualified on the grounds so stated.

(3) An action under this section shall be conducted in the same manner, and is appealable in the same manner, as in the case of an action for a declaratory judgment.

(4) The judgment of the Court shall limit it findings to whether or not the Member is disqualified under section 25, 26, 27, 28 or 29 on one or more of the grounds alleged in the statement of claim and the reasons for the findings, and on entry of the judgment, a certified copy of it shall be delivered to the Clerk of the Assembly.

(5) Where the judgment of the Court is appealed, the Registrar of the Court of Appeal

(a) shall deliver a certified copy of the judgment and reasons of the Court of Appeal to the Clerk of the Assembly, or

(b) if the appeal is abandoned, shall give written notice of the abandonment to the Clerk of the Assembly.

(6) If an action is commenced under this section and is being prosecuted in good faith or has resulted in a judgment, no other action may be commenced under this section against the same Member on a ground of disqualification based on the same or substantially the same facts.

Assembly proceedings following Court finding

35(1) On receiving

(a) a copy of the judgment of the Court of Queen's Bench under section 33(5) or 34,

(b) a copy of the judgment of the Court of Appeal delivered pursuant to section 34(5), or

(c) a notice of the abandonment of an appeal delivered pursuant to section 33(7) or 34(5),

the Clerk of the Assembly shall transmit the copy of the judgment or the notice, as the case may be, to the Speaker, who shall lay it before the Assembly at the earliest opportunity.

(2) When a copy of a judgment containing a finding of disqualification, other than a finding of disqualification under section 25, is laid before the Assembly pursuant to subsection (1), the judgment thereupon stands referred to the Select Standing Committee on Privileges and Elections, Standing Orders and Printing for its review and report.

(3) After the tabling of the Select Standing Committee's report under subsection (2), the Assembly may

(a) declare the Member to be disqualified from membership of the Assembly,

(b) if it finds that disqualification is not warranted in the circumstances but the Member is nevertheless deserving of punishment, by order suspend the Member's right to sit and vote on the Assembly for a stated period or until the fulfilment of a condition in the order, or

(c) declare that the Member is not disqualified if it finds that the allegations in the motion are not proven or that disqualification is not warranted in the circumstances.

(4) A declaration of disqualification of a Member made by the Assembly under subsection (3)(a), or a finding by the Court of the disqualification of a Member under section 25, operates to vacate the Member's seat in the Assembly.

(5) A declaration of disqualification of a Member made by the Assembly under subsection (3)(a) remains in effect until

(a) the expiration of 8 years following the date on which the declaration is made, or

(b) the cause of the Member's disqualification has been removed, whichever occurs first.

Division 2
Vacancies in Membership

Expulsion

36 The Assembly may, after a hearing conducted in accordance with its standing orders, expel a Member for any cause that is sufficient in the opinion of the Assembly.

Resignation

37(1) A Member may resign his seat as a Member

(a) by declaring openly in his place in the Assembly during its proceedings that he resigns his seat as a Member, or

(b) by delivering a resignation signed by him and attested by 2 witnesses t the Clerk.

(2) When a Member resigns his seat in accordance with subsection (1), the seal immediately becomes vacant.

(3) The resignation of a Member does not affect his liability to prosecution for an offence under Part 5 or 6 of the *Election Act*.

Order for election to fill vacancy

38(1) When a vacancy occurs in the membership of the Assembly, the Clerk shall

(a) issue and deliver his warrant to the Chief Electoral Officer for the issue of a writ for the election of a Member to fill the vacancy, and

(b) deliver a copy of the warrant to the Clerk of the Executive Council.

(2) Within 6 months after the delivery of the warrant to the Chief Electoral Officer, an order shall be made under section 36 of the *Election Act* authorizing the issue of a writ for an election to fill the vacancy.

(3) Notwithstanding subsection (2), an order need not be made under section 36 of the *Election Act* if the vacancy occurs during the last year of the legal life of the Assembly.

(4) If the Legislature is dissolved after the issue of the writ referred to in subsection (2) and before an election is held under the writ, the writ is revoked on the dissolution of the Legislature.

(5) A vacancy in the membership of the Assembly does not invalidate any proceedings of the Assembly.

SCHEDULE
DISQUALIFYING OFFICES

Part 1
Judicial Offices

1. Judges of the Provincial Court of Alberta

Part 2
Offices of the Legislature

1. Auditor General of Alberta
2. The Ombudsman under the *Ombudsman Act*
3. The Chief Electoral Officer under the *Election Act*

Part 3
Other Disqualifying Offices

The office of chairman or member of any of the following:

Agricultural Relief Adjustment Board under the *Agricultural Relief Advances Act*
Alberta Agricultural Development Corporation
Alberta Agricultural Products Marketing Council
Alberta Apprenticeship and Trade Certification Board under the *Manpower Development Act*
Alberta Assessment Appeal Board
Alberta Assessment Equalization Board
Alberta Automobile Insurance Board
Alberta Building Standards Council
Alberta Cancer Board
Alberta Dairy Control Board
Alberta Educational Communications Corporation
Alberta Electric Energy Marketing Agency
Alberta Sport Council
Alberta Gaming Commission appointed under section 190 of the Criminal Code (Canada)
The Alberta Government Telephones Commission
Alberta Human Rights Commission
The Alberta Liquor Control Board
Alberta Mortgage and Housing Corporation
Alberta Motion Picture Development Corporation
Alberta Motor Transport Board
Alberta Municipal Financing Corporation
Alberta Order of Excellence Council
Alberta Petroleum Marketing Commission
Alberta Planning Board
Alberta Racing Commission

Appeal board under section 537 of the *Alberta Insurance Act*
Appeal board under the *Farm Implement Act*
Appeal board under the *Freehold Mineral Rights Tax Act*
Appeal board under the *Mortgage Brokers Regulation Act*
Appeal board under the *Real Estate Agents' Licensing Act*
Appeal panel under the *Dependent Adults Act*
Board of the Alberta Securities Commission
Board of Censors under the *Amusements Act*
Board of Directors of the Alberta General Insurance Company
Board of Directors of the Alberta Opportunity Company
Board of Examiners in Optometry
Board of Examiners in Optometry
Board of Examiners in Podiatry
Board of examiners under the *Electrical Protection Act*
Board of examiners under the *Gas Protection Act*
Board of governors of a public college under the *Colleges Act*
Board of governors of a technical institute under the *Technical Institutes Act*
Board of governors of a university under the *Universities Act*
Board of Governors of the Banff Centre for Continuing Education
Board of a hospital district incorporated under section 8 of the *Hospitals Act*
Board of management of a provincial general hospital under the *Provincial General Hospitals Act*
Board of review under section 547 of the Criminal Code (Canada)
The Board of the Northland School Division No. 61
Body incorporated under section 6 of the *Universities Act*
Child Welfare Commission
The Crimes Compensation Board
Dental Technicians Board
Driver Control Board
Energy Resources Conservation Board
Environment Council of Alberta
Fatality Review Board
Health Occupations Board *(see 1984 c53 s28)*
Hospital Privileges Appeal Board
Interim governing authority of a technical institute under the *Technical Institutes Act*
Interim governing body or governing authority of a university under the *Universities Act*
Irrigation Council
Judicial Council for the Judges of the Provincial Court
Labour Relations Board
Land Compensation Board
Land Conservation and Reclamation Council
Law Enforcement Appeal Board
Local Authorities Board
Local Authorities Pension Plan Board
Members of the Legislative Assembly Pension Plan Board
Mineral Assessment Appeal Board under the *Freehold Mineral Taxation Act*
Nursing Assistants Appraisal Board

Occupational Health and Safety Council
Ophthalmic Dispensers Examining Board
Private Vocational Schools Advisory Council under the *Private Vocational Schools Act*
Provincial Board of Health
Public Emergency Tribunal under the *Burial of the Dead Act*
Public Service Employee Relations Board
Public Service Management Pension Plan Board
Public Service Pension Plan Board
Public Utilities Board
Review panel under the *Mental Health Act*
School Buildings Board
Special Areas Board
Special Forces Pension Plan Board
Students Finance Board
Surface Rights Board
Teaching Profession Appeal Board under the *Teaching Profession Act*
Universities Academic Pension Plan Board
University Hospitals Board
The Workers' Compensation Board

STANDING ORDERS
OF THE
LEGISLATIVE ASSEMBLY
OF ALBERTA

CHAPTER 3
DEBATE

Pecuniary interest

33 (1) No member is entitled to vote upon any question in which the member has a direct pecuniary interest and the vote of any member so interested will be disallowed.

(2) If a member feels that the member has a direct pecuniary interest in a matter to be voted upon, the member shall so declare to the Assembly and shall leave the Chamber before the vote is taken.

STATEMENT BY PREMIER LOUGHEED TO THE ALBERTA LEGISLATURE - MAY 2, 1973 - RE MINISTERS PUBLIC DISCLOSURE OF INTEREST

Mr. Speaker, shortly after assuming office in September 1971, I asked for and received from all members of the Executive Council a statement of assets and liabilities. At about the same time I enquired as to whether the previous government had any policy whatsoever on this matter relating to either senior civil servants or members of the Executive Council, and was informed no such policy existed, or had ever existed except for a public statement by former Premier Manning some years ago to the effect that members of the Executive Council should not indulge in business activity which could create possible conflicts with their public responsibilities as ministers. There has up until now in Alberta been no public disclosure by ministers of their land holdings or other business interests.

Last fall, due to an apparent conflict of interest by an Ontario cabinet minister, the Premier of Ontario announced by ministerial statement a direction to his ministers to make a public disclosure of their personal interests on a basis outlined in that statement. I mentioned during our fall session last year that although there was no particular reason or call for similar action in Alberta, I nevertheless felt the approach had merit because it would assure the public that there would be full public knowledge of a minister making or participating in a government decision which might conflict with his personal interests. It also appeared from assessing the Ontario incident that such public disclosure would significantly reduce the probability of a minister inadvertently making a decision involving a proprietory or business interest with which he or she was involved.

Since then, I have been assessing the nature of such disclosure that would best serve the people of Alberta. I came to the conclusion, a few months ago, that it would be desirable if such a statement were expanded to include also, at the same time, a similar position of disclosure by our senior public servants. Unfortunately, this caused some unexpected complications because a number of the public servants had assumed their positions without any requirement that public disclosure of personal interests would be a term of their employment. I am hence somewhat concerned at this date about adding an entirely new factor to their employment relationships with the government.

I am still not fully satisfied with this situation and so my statement today regarding the senior public service must be taken as an interim position pending further discussions after the spring session with senior members of the public service. However, I did not want to further delay this matter and so I wish to issue a statement on public disclosure of interest.

Whereas it is desirable that the people of Alberta be informed of ministers' property interests to ensure that they will be aware of any possible conflicts between a minister's obligations and duties to the public and the minister's personal interests, I have directed that all ministers shall file on or before July 1, 1973, with the Clerk of the Legislative Assembly a statement, which will be available for public inspection, showing:

1. A legal description of all land in Alberta, including mineral rights, in which they or their families have any direct or indirect interest, whether as owner, lessee, mortgagee, unpaid vendor, shareholder of a private company or otherwise.

2. The names of all private companies doing business in Alberta in which they or their families have a financial interest.

3. A description of all proprietorships and partnerships doing business in Alberta in which they or their families have an interest.

Ministers will keep the above statements up to date by filing amendments at the time of any additions or deletions. The phrase "their families" in this statement means the minister's spouse and minor children.

In addition, ministers shall not own, directly or indirectly, shares in any public company whose business might be materially affected by the decisions of the Government of Alberta. Ministers have, however, the option of establishing a trust upon the condition that the minister exercise no influence whatsoever over the investment or management decisions of the trust and with all such decisions to be at the discretion of the trustee. If that is done there shall be no restriction on the trustee's right to purchase shares.

These disclosures and restrains are over and above those contained within The *Legislative Assembly Act* which, among other things, governs dealings between members of the Legislative Assembly and the government.

In addition, senior civil servants who occupy positions where their private business interests might lead to an apparent or actual conflict with government activities will be required to disclose to the Premier, through the minister to whom they are responsible, their personal interests so that the government would be aware of any possible conflict of interest.

I have examined the Legislative approach in the Province of British Columbia, the approach in other areas and the moves within the Province of Ontario and feel that this statement is the best possible statement for the people of Alberta and its government.

STATEMENT BY PREMIER LOUGHEED TO THE ALBERTA LEGISLATURE - MONDAY, MAY 26, 1975 - RE SENIOR PUBLIC OFFICIALS - PUBLIC DISCLOSURE OF INTEREST

As Honourable Members are aware, on May 2nd, 1973, in a statement to the Alberta Legislature I outlined requirements for public disclosure by Ministers of their land holdings and other business interests.

These requirements included the filing by each Minister, for public inspection, on or before July 1st, 1973, with the Clerk of the Legislative Assembly, a statement showing:-

(1) A legal description of all land in Alberta, including mineral rights, in which they or their families have any direct or indirect interest, whether as owner, lessee, mortgagee, unpaid vendor, shareholder of a private company, or otherwise.

(2) The names of all private companies doing business in Alberta in which they or their families have a financial interest.

(3) A description of all proprietorships and partnerships doing business in Alberta in which they or their families have an interest.

It was further required that the above statement should be kept up to date by filing amendments at the time of any additions or deletions. Families were defined to include the Minister's spouse and minor children.

All Ministers, in fact, filed such statements for public inspection in late June 1973. I have again requested that all Ministers sworn in as Members of the Executive Council of Alberta on April 3, 1975 file a new, or initial statement, as the case may be, prior to June 30th, 1975 with the Clerk of the Legislative Assembly.

The requirements for Ministers further provided that Ministers shall not own, directly or indirectly, shares in any public company whose business might be materially affected by the decisions of the Government of Alberta. Ministers have, however, the option of establishing a "trust" upon the condition that the Minister exercise no influence whatsoever over the investment or management decisions of the trust, with all such decisions to be in the discretion of the trustee. If that is done, there should be no restriction on the trustee's right to purchase shares.

In addition to such a public disclosure statement and prohibition on owning shares in any public company whose business might be materially affected by the decisions of the Government, the Ministers, as Members of the Legislative Assembly, are subject to other prohibitions and restrains contained within The *Legislative Assembly Act*. These include the prohibition of a Member of the Legislative Assembly undertaking, directly or indirectly, any contract with the Government under which any public money has been paid to the Member for any service, matter or thing. This prohibition, or requirement for continued eligibility, is subject to only specified exceptions contained within The *Legislative Assembly Act*.

Taken together - that is the statement for public inspection by Ministers of their land holdings and business interests; the prohibition against a Minister owning shares in a public company whose business might be materially affected by the decisions of the Government of Alberta, unless established through a trust; and the prohibitions and restrains set forth in The *Legislative Assembly Act*; are such that I am satisfied that the public interest is served insofar as the Members of the Executive Council are concerned.

In my earlier statement to the Legislature I said that the arrangements regarding the senior public service was only an interim position and that I was not fully satisfied with the situation. However, I did not wish to delay the matter regarding public disclosure of interest for elected Ministers.

It has been my intention for many months to alter and tighten up this situation respecting senior public officials after the election and as the deputy ministers and others were entering into new employment relationships as part of a larger re-organization of government.

I have come to the conclusion that all deputy ministers and other senior public officials of comparable management responsibilities, such as chairmen of certain Crown agencies, boards and commissions should make full public disclosure of their land holdings and business interests in an identical nature to those being made by elected Ministers. These new arrangements will also include the prohibition of owning, directly or indirectly, shares in any public company whose business might be materially affected by decisions of the Alberta Government unless placed in a trust in the same manner as that provided for by Ministers.

These statements for public inspection will be filed by the deputy ministers and other specified senior public officials with the Clerk of the Legislative Assembly on or before August 30, 1975. A list of the positions, in addition to deputy ministers, will be tabled in the Legislature.

In addition, it is our intention that senior public management officials should also be bound by similar prohibitions and restrictions in dealing with the Provincial Government as is the case with elected Ministers as Members under The *Legislative Assembly Act* - in short, that they be precluded from having any business dealings with the Government unless specifically exempted by the regulations. Appropriate regulations or legislation will be brought into force.

It is recognized that such provisions as outlined today may restrict or hamper the Government's ability to attract to senior management positions - however, on balance, it is my view that such public disclosure and also prohibitions against certain business activity will substantially reduce the possibility for conflict of interest by senior government officials in the carrying out of their duties.

ALBERTA ENERGY COMPANY ACT

CHAPTER A-19

Members of the Legislative Assembly

31 The right of a member of the Legislative Assembly to participate in any debate or to vote on any question relating to any matter affecting the Company is not affected by the fact that any voting shares of the Company are held in the name or right of or for the use or benefit of that member.

PUBLIC SERVICE ACT

CHAPTER P-31

Personnel Administration Office

Personnel Administration Office

3(1) There is hereby established within the public service of Alberta a Personnel Administration Office.

(2) Subject to this Act, any employees required may be appointed to the staff of the Personnel Administration Office.

Public Service Commissioner

4(1) The Lieutenant Governor in Council shall appoint a Public Service Commissioner who shall administer this Act subject to the general direction of the Minister.

(2) The Commissioner is the deputy head of the Personnel Administration Office.

(3) The Commissioner may

(a) delegate any powers, duties or functions conferred or imposed on the Commissioner by this Act or the regulations to an officer of the Personnel Administration Office;

(b) with respect to the employees of any department or any class or group thereof, delegate any powers, duties or functions conferred or imposed on the Commissioner by this Act or the regulations to the deputy head of that department or an officer of that department;

(c) amend, replace or revoke any delegation made under this subsection;

(d) make any delegation made under this subsection subject to any conditions he prescribes.

Duties of Commissioner

5(1) The Commissioner shall

(a) advise the Minister respecting personnel policies, regulations and procedures;

(b) keep informed of developments in personnel administration so that they may be applied where desirable to the public service;

(c) advise and assist departments in the conduct of departmental personnel activities;

(d) provide on the request of a department, management advisory services in such areas as employee training and development, manpower planning and organization studies;

(e) advise the Minister as to how employee training programs of interdepartmental application may be co-ordinated between departments;

(f) conduct programs and investigations and prepare reports as required by the Minister or the Treasury Board concerning any aspect of staff utilization in the public service;

(g) maintain the records he considers necessary for the proper administration of this Act or as directed by the Minister;

(h) prescribe the use of forms as may be required for carrying out this Act and the regulations;

(i) represent the Crown in right of Alberta under the *Public Service Employee Relations Act.*

(2) The Commissioner shall make an annual report to the Minister on the operations of the Personnel Administration Office for the preceding calendar year which shall be laid before the Legislative Assembly at the next ensuing sitting of the Legislature.

Conditions of Service

Oath of office

20(1) Every new employee shall take and subscribe an oath in the following form:

I, , do swear that I will execute according to law and to the best of my ability the duties required of me as an employee in the public service of Alberta and that I will not, without due authorization, disclose or make known any matter or thing which comes to my knowledge by reason of my employment in the public service.

(2) Any employee who without due authorization discloses or makes known any matter or thing which comes to his knowledge by reason of his employment in the public service of Alberta is guilty of an offence and liable to a fine of not more than $500.

Code of conduct and ethics

23(1) The Lieutenant Governor in Council may issue a code of conduct and ethics for the public service.

(2) Each department head may issue a supplementary code of conduct and ethics respect matters of concern to his department.

Certain dealings by employees prohibited

24(1) Unless authorized by general regulations or particular orders made by the Lieutenant Governor in Council,

(a) no employee

(i) shall be a bidder at a sale of Crown land, or

(ii) shall acquire an estate or interest in Crown land,

either directly or indirectly, in his own name or through another person or in the name of a person in trust for himself,

(b) no employee shall

(i) be a shareholder or director of a corporation or company that has an estate or interest in Crown land, or

(ii) have directly or indirectly an interest in shares of a company that has an estate or interest in Crown land in his own name or through another person or in the name of a person in trust for himself,

unless the shares of the company are regularly quoted and dealt in on a recognized stock exchange, and

(c) no employee shall take or receive for his own use a fee or emolument for negotiating or transacting any business connected with his official duties.

(2) An employee who wilfully contravenes this section is guilty of an offence and liable to a fine of not more than $500, and in default of payment to a term of imprisonment for not more than 3 months.

(3) An estate or interest in Crown land acquired in contravention of this section is void.

(4) In this section, "Crown land" means all land, mines and minerals belonging to the Crown in right of Alberta and any estate or interest therein, including, without limitation,

(a) an agreement or mineral claim within the meaning of the *Mines and Minerals Act*,

(b) a disposition within the meaning of the *Public Lands Act*, and

(c) a lease, licence or permit under the *Forests Act*.

(5) In this section "employee" includes an employee of the Research Council of Alberta.

Disciplinary action

25(1) Subject to any collective agreement between the Crown in right of Alberta and a bargaining agent under the *Public Service Employee Relations Act* an employee may be dismissed, suspended or subjected to other disciplinary action by his department head

(a) if he is unable to satisfactorily perform his duties, or

(b) for misconduct, improper conduct or negligence.

(2) Subject to any collective agreement between the Crown in right of Alberta and a bargaining agent under the *Public Service Employee Relations Act*, if the employee is on permanent appointment he may appeal against the dismissal or other disciplinary action in the manner prescribed by the regulations.

(3) Nothing in this section or the regulations impairs or otherwise affects the right of the Lieutenant Governor in Council to reinstate or dismiss any employee.

A CODE OF CONDUCT AND ETHICS
FOR
THE PUBLIC SERVICE OF ALBERTA

1. Introduction

The people of Alberta have a right to public service which is conducted with efficiency, impartiality and integrity. It is this special obligation which demands that there not be, nor seem to be, any conflict between the private interests of employees and their responsibility to the public.

The range of complexity of government activities is such that it is not possible to produce a list of prohibitions which permits uniform application; the following sections are therefore issued as guidelines to departmental administrators and employees. The sections are not intended to be exhaustive and if other questions arise, they should be settled in accordance with the general principles in this code.

2. Administration

2.1 This code applies to:

(a) all employees appointed pursuant to section 17 of the *Public Service Act* (RSA 1980) including deputy ministers, and

(b) all persons hired as wage employees pursuant to section 26 of the *Public Service Act* (RSA 1980), and

(c) all persons employed on a contractual basis pursuant to section 29 of the *Public Service Act* (RSA 1980), unless exemptions are specifically made in the contract of employment, and the term "employee" wherever it is used in this code shall include all of the above.

2.2 The responsibility for administration of this code, and for issuing the instructions necessary to implement it rests with the deputy head of each department.

2.3 The responsibility for administration of this code with respect to deputy heads rests with the Executive Council.

2.4 A deputy head may issue instructions, to employees of his department, which modify, vary or add to matters dealt with in this code, provided that they are not more permissive than this code.

3. Outside Employment

3.1 Employees may take supplementary employment, including self-employment, unless such employment:

(a) causes an actual or apparent conflict of interest, or

(b) is performed in such a way as to appear to be an official act, or to represent a Government opinion or policy, or

(c) unduly interferes through telephone calls, or otherwise, with regular duties, or

(d) involves the use of Government premises, equipment, or supplies, unless such use is otherwise authorized.

3.2 Where it is evident that a conflict of interest might arise in taking supplementary employment, it is the duty of employees to notify their supervisor *in writing* as to the nature of the employment.

3.3 Employees shall not accept monetary or other payment in addition to normal salary or expenses for duties which they perform in the course of their public service employment.

3.4 Employees may, with the consent of their deputy head, teach courses at institutions for a fee during normal working hours provided that:

(a) acceptable arrangements can be made for the employee to perform all regular duties, and

(b) course preparation and marking is done on the employee's own time, and

(c) no other conflict arises.

3.5 Where infringement upon normal duties is unavoidable the deputy head may require that all or part of the fee received under 3.4 be paid to the Provincial Treasurer.

4. Investment and Management of Private Assets

4.1 Where the business or financial interests of employees, their spouses or of their children under the age of eighteen, are affected or appear to be affected by actions taken or decisions made in the course of their public service employment, the employees shall disclose those interests to their deputy head, in writing.

4.2 If an actual or potential conflict of interest situation exists as a result of disclosure under 4.1, the business or financial interests may, with the approval of the deputy head, be placed in a blind trust.

4.3 A deputy head may require that employees in specific positions disclose specific types of business interest which would, in the opinion of the deputy head, create a conflict of interest.

4.4 No employee who is involved in the decision making process for the acquisition or sale of assets for the Crown or for the provision of services to the Crown, shall acquire such assets from or sell such assets to the Crown or provide such services to the Crown unless the Treasury Board approves the transaction.

5. Political Activity

5.1 Subject to sections 5.2 and 5.3, there is no restriction upon participation in political activity by employees save that they must not participate directly in the solicitation of contributions within the meaning of the *Election Finances and Contributions Disclosure Act*, the *Election Expenses Act (Canada)*, or the *Canada Elections Act*.

*5.2 Employees who occupy positions in the Executive Manager classes of the Management Compensation Plan and those referred to in O.C. 709/82 as amended, may not seek nomination as a candidate in a federal or provincial election nor hold office in a political party or constituency association.

5.3 Employees who wish to run as candidates in a provincial or federal election must take leave of absence without pay commencing on the day after the writ for the election is issued or on the day that their candidacy is publicly announced whichever is the later, and the restriction of solicitation in section 5.1 shall not apply to such employees once a public declaration of candidacy has been made.

5.4 An employee who is elected to federal or provincial office shall resign effective the last day before the commencement of leave of absence without pay.

5.5 An employee who seeks election and is not elected, shall be entitled to return to the same or similar employment, effective the day after the election.

5.6 An employee who is a candidate for municipal office shall, if elected, be subject to the provisions of this code regarding outside employment.

5.7 Employees described in section 5.2 may be permitted to be candidates in a municipal election if the Commissioner, having regard to the general principles of this code, so approves.

6. Public Statements

6.1 Employees who speak or write publicly are responsible for ensuring that they do not release information in contravention of the oath of office set out in section 20 of the *Public Service Act* (RSA 1980).

6.2 The responsibility for maintaining the confidentiality of information or documents includes the responsibility for ensuring that such information or documents are not directly or indirectly made available to unauthorized persons.

7. Acceptance of Gifts

7.1 An employee shall not accept a gift, favour or service from any individual, organization or corporation, other than: the normal exchange of gifts between friends; the normal exchange of hospitality between persons doing business together; tokens exchanged as part of protocol; or the normal presentation of gifts to persons participating in public functions.

8. Dealings with Relatives

8.1 Employees who exercise a regulatory, inspectional, or other discretionary control over others shall, wherever possible, disqualify themselves from dealing with relatives, including parents, parents-in-law, brothers and sisters, and grandparents, with respect to those functions.

9. Penalties

9.1 This code is additional to any statute pertaining to the actions of employees.

9.2 An employee who does not comply with any provisions of this code may be subject to dismissal or other disciplinary action pursuant to section 25 of the *Public Service Act* (RSA 1980).

10. Review of Decision

10.1 Where a difference of opinion exists as to whether a conflict of interest exists as a result of a declaration under section 3.2 or 4.1, or under a similar section of a departmental code an employee may request that the decision of the deputy head be reviewed by the Treasury Board.

[The Code is supplemented by administrative interpretations and in some cases, by supplementary departmental codes.]

APPENDIX 4

CONFLICTS OF INTERESTS RULES IN CANADA

FEDERAL AND PROVINCIAL GOVERNMENTS

LEGISLATION, GUIDELINES AND REPORTS

PART 1

INTRODUCTION TO APPENDIX

The mandate of this Review Panel is "to review Alberta legislation and guidelines that relate to conflict of interest rules applicable to" ministers, MLAs and some senior public servants and to make comments and recommendations. The measures taken by the federal Government and the governments and legislatures of the provinces are highly relevant to our review, and we summarize some of them in this appendix - notably federal and Ontario legislation and guidelines - and make brief reference to others.

In recent years, there have been public official reviews of conflict of interest rules relating to some or all of these categories at the federal level and Ontario, Alberta, Manitoba and Saskatchewan. Some of these have been general inquiries (although they were established in reaction to particular cases). Others have been inquiries into specific circumstances, but have of necessity considered and commented on conflict of interest rules in general. We have found the reports resulting from these inquiries highly instructive, and their contexts are highly relevant to Alberta. We summarize some of these as well.

The purpose of this appendix is to provide a review of some of the background information which we have found useful in coming to the decisions reflected in the report itself. This is not a research report, and we do not purport to describe all legislation, guidelines, inquiries and reports. For those which we do describe, we restrict our description to those aspects which seem to us to be of particular relevance to our review. They are all valuable, and the reader who wants information about the subject and analysis of the problems and possible solutions should read them themselves.

The primary focus of this appendix is upon ministers and members of Parliament and legislatures. Senior public servants are mentioned, but only in association with ministers and legislators. We have not thought it useful to compile similar materials with respect to senior public servants.

We first give a brief outline of the elements of conflicts of interests systems which are found in federal Canada and in the provinces. Since these have evolved historically and at different rates depending upon the circumstances which obtain in the different jurisdictions, some of them are fragmentary measures adopted to deal with some part of the subject, while some can properly be called systems. We have not thought it necessary or desirable to describe all the provincial systems, as such descriptions soon yield diminishing returns.

Next, we deal at some length with inquiries, reports, legislation and guidelines in the jurisdictions which we have found useful as models, federal Canada and Ontario. Finally, we deal more briefly with the Culliton Report in Saskatchewan, the Freedman Report in Manitoba, and give a brief description of the Manitoba legislation as it varies somewhat from the general pattern.

PART 2

ELEMENTS OF CONFLICTS OF INTEREST SYSTEMS IN CANADA

Conflicts of interests legislation and guidelines in Canada, both in the federal structure and in the provinces, tend to include some or most of the following elements:

(a) legislative prohibitions against legislators, and sometimes their spouses, children and corporations, or some combination of these, entering into contracts with the government or receiving payments or other benefits from the government. Such provisions are usually found in the basic statute dealing with membership in the legislative body. It has been found necessary to insert a general exception for benefits under general programmes of the government or specific exceptions to cover the same ground. Enforcement is entrusted to the courts or to a combination of courts and legislature.

(b) rules of conduct. These are not formally expressed in every case. They may be imposed by the head of the government (as in the case of some of the rules of the federal government), by legislation (as in Ontario), or by standing order of the legislature (as in Alberta). They may apply to ministers only or to ministers and legislators. They are likely to include

   (i) a requirement that a minister or legislator declare any private pecuniary interest in any business which arises, retire from the proceedings, and take no part in them.

   (ii) a prohibition against the use of inside information.

   (iii) a prohibition against use of influence to further private interests.

(iv) a prohibition against receiving most gifts or benefits, sometimes accompanied by a disclosure requirement with respect to those which are permitted, but with some small threshold amount.

and may include a prohibition against giving preferential treatment to preferred people.

(c) disclosure provisions. These may apply only to ministers (as in Alberta and Quebec) or to both ministers and legislators (as in Manitoba). They may be extensive (as in Ontario) or fairly limited (as in Alberta). Enforcement may be by the head of the government (as in the federal government, by the legislature involved, by the courts or a designated judge, or under a system administered by an independent official with the final decision resting with the legislature (as in Ontario). The disclosure may be wholly non-public (as in New Brunswick and Nova Scotia), wholly public (as in Alberta), or initially confidential with a filtered public disclosure statement (as in Ontario). There may be a threshold provision to exclude the disclosure of trivia. An official may (as in Ontario and the federal government) have some discretion as to what should be disclosed.

(d) divestment requirements, intended to minimize the occurrence of conflicts of interests by causing ministers (and sometimes senior public servants) to divest themselves of interests which are likely to come into conflict with public duties. These are not uniformly required. They do not apply to legislators. They may be limited (e.g., divestment of publicly trades shares in companies impacted by provincial activities, as in the Alberta guidelines) or more extensive (continued ownership would involve a potential conflict, as in the federal Code).

(e) trust arrangements as an alternative to either or both of disclosure and divestment. These may include an assortment of trusts (blind, management and frozen trusts under the federal Code), a blind trust alone (as under the Alberta statute and guidelines), or a management trust alone (as under the Ontario Act). The blind trust has come increasingly under attack in recent years.

(f) prohibitions against outside activities. These apply to ministers, and generally forbid outside professional or business activities. It is not entirely clear whether the intention behind these prohibitions is to minimize conflicts of interest, or whether it is to ensure that ministers pay proper attention to their official duties.

(g) some form of administration. A provision for administration is not integral to the provincial non-legislated guidelines, though the premiers who promulgate guidelines are in a position to manage the guidelines if they so choose. The federal Code provides for administration by the ADRG, under the Prime Minister, on the disclosure and divestiture side. One or two of the provinces give the court some form of advisory and directory function in legislation dealing with disqualification, and two give some authority to a designated judge on the disclosure side.

The Ontario Act, in fact, and federal Bill C-46, in prospect, provide for a system of administration throughout the whole conflicts of interests system, with provisions for educational activities, authoritative advisory powers, monitoring and filtering of financial disclosure, discretionary powers to relax and adjust rules which impact unduly harshly upon individuals, and investigatory (and, in the case of Ontario, sanction-recommending) powers.

(h) post-employment restrictions on ministers. These may include a time-limited or a time-unlimited prohition against acting in connection with a matter which the minister had something to do with while in office. They are likely to include time-limited prohibitions against lobbying their departments or agencies and they may include restrictions on advising new employers with whom they had dealings while in office.

PART 3

CANADA AND ONTARIO: REPORTS AND LEGISLATION

1. CANADA

(1) Inquiries

(a) The Starr-Sharp Report, *Ethical Conduct in the Public Sector: Report of the Task Force on Conflict of Interest*, 1984) ("the Starr-Sharp Report)

(i) Summary and comments

The Starr-Sharp Report, as the Hon. Mr. Parker said in the Parker Report, "provided a comprehensive and sophisticated review of existing federal and provincial conflict of interest regimes", and set out proposals for reform. It contains the first statement, among the reports and legislation reviewed in this appendix, of proposals for a legislatively based conflicts of interests system which would be principled, which would include full financial disclosure to an official entity, with some lesser disclosure to the public, and which would be managed to a considerable extent by that official entity, which would have educational, advisory and investigational powers.

The Task Force's mandate included ministers and public servants. It did not include MPs and senators. The first reaction to it was the *Conflict of Interest and Post-*

Employment Code for Public Office Holders which is reviewed below. The inadequacies of the *Code* having become apparent, the next reaction was federal Bill C-114 and its successor Bill C-46, which, if enacted, will establish a full-scale legislative conflicts of interests system for MPs and senators.

(ii) Nature of Starr-Sharp inquiry

In July 1983, Prime Minister Trudeau established a Task Force to review policies and practises affecting the conduct of past and present federal office holders. The joint chairmen, Michael Starr and Mitchell Sharp, were former cabinet ministers. The executive director was Patrick Boyer, a lawyer who has done much writing about government institutions and is now a Member of Parliament. The "catalyst" which led to the inquiry was public concern about the relationship between a former cabinet minister and the department over which he had presided (Report p. 6). The Task Force issued a report in May 1984 which contains the most extensive current analysis of ethical conduct in government and measures which have been and might be taken to encourage it.

The inquiry was concerned with ministers, parliamentary secretaries, ministers' political staff and full-time functionaries appointed by order in council. Its mandate did not extend to the rules affecting members of the House of Commons or the Senate, but it necessarily considered those rules insofar as they affected ministers and parliamentary secretaries, who are, of course, drawn from the two Houses.

(iii) General approach of the Task Force

The Task Force found "a clear need to develop the existing guidelines into a structure of principles and procedures which can be more readily understood by public office holders, Parliament and the public, which can be adapted to the circumstances of office holders with varying responsibilities, and which will result in greater consistency in application" (Report p. 8). It did not do this because it found a need to establish new or more rigid standards of conduct or for more rigorous application of procedures to minimize conflicts of interest; on the contrary, it found that the ethical standards of office-holders were high and that serious problems of misconduct were exceptional. The need for comprehensibility, clarity and flexibility were accordingly the driving force behind the Task Force's recommendations.

(iv) Criteria for ethical rules

In the view of the Task Force, there are two themes of equal value (Report p. 15 - 21). The first is that ethical conduct in the federal government must be beyond reproach. The second is that the federal government must be able to obtain qualified personnel. Neither must be sacrificed to the other.

Changing public views of acceptable standards of conduct are making unacceptable conduct which was formerly considered appropriate. The Task Force noted that stringent requirements, particularly requirements that persons coming into the public service divest themselves of personal investments, sometimes involving significant economic loss, militate against getting the necessary personnel from outside government, while at the same time the federal government is relying more on attracting such personnel.

The Task Force thought that looking at conflicts of interest in economic terms is not enough. Conflicts of interest will arise. They must be resolved in the public interest "whether by resignation, divestment of assets, disclosure, disqualification from handling the matter, or other means" (Report p. 22).

Policy objectives and underlying principles are (a) impartiality, fairness and equality of treatment toward those dealing with government; (b) assurance that decisions of public importance will not be influenced by private considerations; (c) efficiency and economy; (d) maintenance of public confidence in government; (e) prevention of the use of public office for personal advantage; (f) encouragement of a positive and professional attitude towards government service; and (g) facilitation of movement of individuals between the public and private sectors (Report p. 23-24).

The Task Force thought that three questions should be asked about standards of conduct and procedures (Report p. 24-27). They are:

- are they simple? The simpler the rules, the more readily they are understood, and the less cope they give for evasion.

- are they fair? Both the rules and the procedures should be fair and should be uniformly followed.

- are they reasonable? A rule which prohibits a public official from advising on the management of a family trust invested in publicly traded securities, which involves undue red tape or which applies to trivia, may be seen as unreasonable.

(v) Unethical conduct

The Task Force thought that the conduct of public office-holders should be guided by the following principles (Report p. 34-49):

(a) they must not have personal interest which would be affected particularly significantly by government actions in which they participate;

(b) they must not accept or solicit transfers of economic value from private sources if the transfer is at the discretion of the donor;

(c) they must not, without prior approval of their superiors, step out of official roles to assist privat entities or persons in their dealings with the government;

(d) they should not, within certain narrow and stipulated limits of time and degree of connection with their former responsibilities, but not otherwise, to assist private entities or persons in their dealings with government;

(e) they must not take personal advantage of information obtained in the course of their official duties until it has become generally available to the public;

(f) they must not, directly or indirectly, use or allow the use of government property for anything other than officially approved activities;

(g) if non-elected, they must not engage in partisan political activities;

(h) they must not express publicly personal views on matters of political controversy or on government policy or administration if doing so is likely to impair public confidence in performance of their duties or to impair relations with other governments; and

(i) they must not engage in conduct which exploits for private reasons or personal gratification their positions of authority or which would discredit the professionalism of the public service.

(vi) Responsibility for ethical conduct

The Task Force (Report p. 50-55) thought that individual responsibility should be incorporated into any system of rules respecting ethical conduct in the public service. Management, the Prime Minister, law enforcement agencies, the courts, Parliament, the political parties, the media, and educators, all have responsibilities in the area.

(vii) Form of conflicts of interests regime

The Task Force concluded (Report p. 56-62) "that dependence on unwritten rules is no longer feasible or desirable, that there is merit in the formulation of a code of ethical conduct for the public sector, that the term "guidelines" should be abandoned, that any statutory regime should avoid the legalistic United States pattern and that the proposal for an Ethics Counsellor has merit".

The Task Force thought that "guidelines" should not be used because of ambiguities and misunderstandings as to their effect (Report p. 58, 188). It thought that the then current guidelines should be replaced by

(a) a code of ethical conduct;

(b) procedures to minimize conflicts of interest; and

(c) supplemental procedures for specific departments, agencies and Crown corporations (Report p. 187).

The Task Force recognized the value of some of the ethics commissions which have been established in the United States. It recommended that the present Assistant Deputy Registrar General be elevated into a new body or office with a clearer mandate, broader powers and a higher public profile (Report p. 206-219.) The new Office of Public Sector Ethics, under an Ethics Counsellor, would have four functions:

(a) advising those who administer the rules and interpreting principles and procedures;

(b) administer the rules, ensure that they are enforced, waive or modify them where an unfair or unreasonable result would be imposed, so long as the principles are observed;

(c) investigate, at the instance of the Prime Minister or a department or agency head, allegations that the Code of Ethical Conduct has been breached; and

(d) mount a more effective educational program through the federal public service about the rules and their application.

The Task Force thought that the new system should be implemented by legislation, an *Ethics in Government Act* (Report, Schedule E), which would

(a) enact the Code of Ethical Conduct;

(b) authorize the Governor-in-Council to make regulations authorizing procedures for public office holders, particularly to enable them to minimize conflicts between their private interests and public duties; and

(c) provide for the Ethics Counsellor.

(b) *Conflict of Interest and Post-Employment Code for Public Office Holders*, September 1985

(i) Summary and comments

The Code applies to ministers and to the federal counterpart of the senior public servants who fall within the Review Panel's mandate, but it does not apply to MPs and senators.

Although promulgated by Prime Ministerial directive rather than legislation, and lacking important aspects of the Starr-Sharp proposals, the Code appears to have been a reaction to the Starr-Sharp Report. It provides a fairly elaborate disclosure-divestment scheme under the management, subject to control by the Prime Minister, of the ADRG, who, however, remains a Prime Ministerial appointment, though one with a considerable degree of capacity to initiate and advise. It also provides significant post-employment restrictions, time-limited for the most part to two years for ministers and one year for senior public servants.

(ii) Application

The Code was issued in 1985 and remains in effect today, though, as to MPs and senators (including ministers and parliamentary secretaries) it will be displaced by Bill C-46 if the latter is enacted. It is based on the Prime Minister's authority.

The Code

- applies to ministers, parliamentary secretaries, ministers' political staff, full-time officials appointed by the Governor in Council, and the public service, though only to those who are appointed or re-appointed after the Code came into force
- is intended to enhance public confidence in the integrity of public office holders and the public service, encourage appropriate people to take office, facilitate interchange between the private and public sectors, establish clear conflict of interest and post-employment rules, and minimize and resolve conflicts of interest in the public interest (s.4).
- requires conformity to principles requiring public office holders to maintain public trust, act in a manner that will bear the closes public scruting, not to have private interests (with some exceptions) that would be affected particularly or significantly by government actions in which they participate, arrange their affairs to avoid conflicts of interest, resolve in the public interest conflicts which do arise, not to solicit or accept transfers of economic benefit other than incidental and nominal benefits except under contractual or property rights, not to assist private entities to get preferential treatment, not to take advantage of information received in the course of office and not generally available, not to use government property for activities not officially approved, and not to take improper advantage of former office.

The Code establishes two classes of office holders. "Category A" office holders are ministers, parliamentary secretaries, some ministerial political staff, and full time Governor in Council appointments (other than judges and some others). "Category B" office holders are the rest of the public service. It is only Category A office holders who are relevant to the Review Panel's mandate, and this review will deal only with the provisions relating to them.

(iii) Avoidance, disclosure and divestiture

The Code provides the following methods of compliance by Category A office holders with conflicts of interests requirements:

(a) avoidance. This involves avoidance of or withdrawal from participation in activities in which a conflict of interest exists.

(b) disclosure. In relation to Category A office holders, it appears that the Code contemplates first a confidential disclosure of ownership of assets, receipt of gifts or participation in an outside activity or employment which could give rise to a conflict of interest or otherwise impair ability to perform official duties and responsibilities objectively, and then public disclosure.

(c) divestment. This may be done by a sale at arms' length. It may also be done by putting the property into one of a number of kinds of trusts.

The Code does not provide an exhaustive list of trusts but refers specifically to "blind" trusts, "frozen" trusts, and "retention" trusts. In all cases custody of the assets must vest in a trustee and the Category A office holder must not have any control over them. Under a blind trust, the trustee is to make all investment decisions and no information is to be provided to the office holder. The other categories of trusts are essentially for retention of specific assets.

The Code provides for payment of reasonable costs, approved by the ADRG, in connection with of trusts entered into for compliance purposes.

The Code establishes three kinds of assets:

(i) "exempt assets", being certain kinds of property used for private purposes and certain kinds of investments which are either of a kind not likely to give rise to conflicts or (such as open-ended mutual funds and non-self-directed RRSPs) are incidental to a principal investment and are beyond the control of the office holder. Exempt assets need not be declared or divested.

(ii) "controlled assets", which could be directly or indirectly affected as to value by government decisions or policy, including publicly traded securities, self-administered RRSPs which are not exclusively exempt assets, and commodities, futures and foreign currencies held or traded for speculative purposes. Controlled assets must in general be divested, though Category A office holders might retain some with the approval of the ADRG.

(iii) "declarable assets", which include everything else (or at least, everything else which "might give rise to a conflict of interest in respect of the office holder's official duties and responsibilities: s. 44), including local private businesses, farms, real property, and other things beneficially owned and administered at arms' length. Declarable assets must, in general, be publicly disclosed. If that is done, the Category A office holder can deal with them, "subject only to exercising vigilance to ensure that such dealings cannot give rise to a conflict of interest".

Disclosure is also to include all direct and contingent liabilities which might give rise to a conflict of interest (s. 44).

The Code gives the Assistant Deputy Registrar General of Canada (ADRG) significant functions with respect to compliance by Category A office holders. The ADRG is the custodian of confidential financial information and has the duty of seeing that public financial information is available; and compliance arrangements by Category A office holders other than ministers (whose compliance arrangements must be approved by the Prime Minister) are subject to his approval. He can determine that assets are of such minimal value that they do not constitute any risk of conflict of interest. He approves trust arrangements, and is the trustee of some kinds of passive trusts. He has some discretion about retention of controlled assets. In these respects, appeal can be made to the Prime Minister or the Prime Minister's designate.

(iv) Outside activities

A Category A office holder may not engage in a profession; actively manage or operate a business or commercial activity; be a director of a financial or commercial operation; hold office in a union or professional association; or serve as a paid consultant. With the approval of the ADRG (or, in the case of a minister, the approval of the Prime Minister), a Category A office holder may hold non-profit directorships and, in special circumstances, may engage in the prohibited activities if they are related to the office holders official duties.

All outside activities must be disclosed to the ADRG and in a public declaration prepared by the ADRG.

(v) Benefits

A Category A office holder may accept incidental gifts, hospitality or other benefits of nominal value arising out of their official activities if the benefits

(a) are within the bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality,

(b) are not such as to bring suspicion on the office holder's objectivity and impartiality, and

(c) will not compromise the integrity of the Government.

A Category A office holder may

(a) accept official gifts, hospitality and other benefits of nominal value from governments or in connection with official or public events, and

(b) gifts, hospitality and other benefits from family members and close friends.

Otherwise, Category A officeholders must decline "gifts, hospitality or other benefits that could influence them in their judgment and performance of official duties".

A Category A office holder who receives a benefit having a value of $200 or more must disclose it to the ADRG and make a public declaration. He or she may consult the ADRG about the appropriateness of accepting an offer of a benefit.

(vi) Preferential treatment

A Category A office holder must not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which the office holder, family members or friends have an interest. The office holder must take care to avoid being placed, or giving the appearance of being placed, under an obligation to any person or organization that might profit from special consideration on the part of the office holder.

(vii) Sanctions

Where a Category A public office holder does not comply with the requirements which have been described to this point, he or she is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of appoint (though discharge or termination would presumably have to be effected by order in council).

(viii) Post-employment and related restrictions

Former Category A office holders are not to take improper advantage of their previous offices. They are not to obtain preferential treatment or privileged access, take personal advantage of information obtained in office and not generally available to the public, or use public office to unfair advantage in obtaining opportunities for outside employment. While in office, Category A office holders are not to allow prospects of outside employment to create a real, potential or apparent conflict of interest.

A Category A office holder must disclose all employment offers received and accepted, and, if an accepted offer involves significant official dealings with the future employer, the office holder is to be assigned to other responsibilites.

After leaving office, a Category A office holder

(a) must not at any time act for anyone in connection with any specific ongoing matter to with the Government is a party if the former office holder acted for or advised a department or if a benefit of a purely commercial or private nature or not for general application would be conferred.

(b) must not for one year (or two years in the case of a minister)

(i) accept a directorship with an entity with which the former office holder had significant official dealings during the last year of office;

(ii) make representations for any other person to a department with which the former office holder had significant official dealings during the last year of office; or

(iii) give counsel for commercial purposes concerning the programs or policies of a department with which the office holder was employed or had a significant official relationship during the last year of office.

The Prime Minister, upon considering a number of listed factors, may reduce a limitation period. The ADRG is to advise departing Category A office holders about post-employment requirements.

A Category A office holder who does not comply with these restrictions is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of appointment. (It is not apparent what the Prime Minister could do about a former official.)

(c) The Parker Report, *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens*

(i) Nature of inquiry

As the Parker Inquiry received wide publicity at the time, it is not necessary to give an account of it here. However, the recommendations made by the Hon. Mr. Parker are of interest and importance.

(ii) Defects of the federal Code

The *Conflict of Interest and Post-Employment Code for Public Office Holders* was in force at the relevant times. The Hon. Mr. Parker thought that it has the following defects:

(a) it does not provide an adequate public disclosure system because it does not call for the public disclosure of "controlled" assets, for the disclosure, even to the ADRG, of "restricted" assets, or for the disclosure of outside activities other than directorships.

(b) it does not give workable criteria for deciding what is to be disclosed, how it is to be disclosed, whether it has to be divested, and how it is to be divested.

(c) the "blind trust" is available for any kind of asset, including assets, such as a family business, which would never be sold by the trustee, so that the trust is not "blind".

(d) there is no definition of "conflict of interest", which is needed at least for some grey areas.

(iii) Views and recommendations

The Hon. Mr. Parker recommended "that comprehensive legislation be enacted relating to conflict of interest; that the legislation contain clearly worded definitions and directions; that conflict of interest be defined as suggested in Chapter 3 of this report; that the compliance requirements be clearly drawn and easily understood; and that the legislation be enforced where appropriate with penal sanction.

His specific recommendations were:

(a) that the federal conflict of interest law should be based on the principle of public disclosure.

The Hon. Mr. Parker thought that public confidence in the integrity of public officials depends upon a healthy measure of public vigilance and that public vigilance depends upon reasonable access to information about private interests related to public office. Privacy, however, should be protected by allowing office holders to keep private truly personal assets, such as those exempt under the Code and by disclosing only the source, type and range of value for certain kinds of financial interests (such as "under $1000", "1000 to $5000", or "over $100,000"). Activities and interests should also be disclosed. He took comfort from the fact that a survey of United States congressmen and senators found no evidence that financial disclosure affected a decision to run for office.

(b) that the financial interests (subject to an exemption of truly independent financial interests which do not benefit the office holder, if this can be worked out) and certain activities of a spouse should also be publicly disclosed.

The Code does not apply to spouses. The Prime Minister's letter of September 9, 1985, as summarized in the report, imposed a duty on ministers to ensure that a spouse's activities do not create a conflict for the minister, and, secondly, that a spouse is not used as a vehicle to circumvent restrictions on the minister's behaviour.

Recognizing that it has been objected that including spouses is inconsistent with recognition of separate professional, economic, social and political interests, the Hon. Mr. Parker though the objection misconceived: an assumption that spouses would be women whose activities would confined to the home could just as easily have led to the present requirement that spouses not be required to comply. It is the very increasing independence that gives rise to concerns about conflict of interest. The creation of regimes where each spouse has a clear pecuniary interest in the financial activities of the other have only enhanced the social reality that spouses usually have a profound effect on one another.

No conflict of interest regime could or should require a spouse to divest property or to abandon a career or other social or political interests. However, the importance of the need to ensure that actual decision making is free from conflict as well as to enhance the community's perception that this is so cannot be overestimated, and relates to the continued legitimacy of the state itself and the maintenance of the consensus necessary to govern. A modern conflict of interest regime requires public disclosure of the financial interests of spouses, whether male or female, and of their commercial activities, to the same extent as those of office holders, subject, at least in principle, to an exemption for a truly independent financial benefit which is of no benefit to the office holder.

(c) that the rules pertaining to disclosure and divestment should be set out in plain English and French so they can be easily understood.

(d) that the blind trust should be abolished.

Disclosure does not prevent conflicts of interest. To avoid the debilitating effect of permanent or semi-permanent recusal from exercising the duties and responsibilities of office, the office holder must divest certain private interests, or alternatively change portfolios or resign from public office.

In the Hon. Mr. Parker's view, a blind trust, as a form of divestiture could not be effective until the office holder is advised that the problematic asset had been divested, which might not happen on a timely basis. The real difficulty with blind trusts, he said at one point, stems from the vague and open-ended definition of assets which could be put into a blind trust, which allowed Mr. Stevens to place what was effectively a family business into one whose blindness understandably because the subject of immediate scepticism even apart from evidence of his knowledge of and involvement with its affairs.

However, the more important question is whether the blind trust should be retained at all. It can work as a legitimate vehicle for disvestment only if its "blindness" can be ensured. In the Hon. Mr. Parker's view, the only assets that should be placed into a blind trust are those that can truly and easily be sold by an arm's length trustee, such as publicly traded securities. Given this narrow definition, and given the reality that most office holders could use the transition period to allow for a regularized divestment of a stock and bond portfolio, he questioned the rationale for retaining such a widely criticzed instrument and recommended its abolution.

The Hon. Mr. Parker discussed at some length the "management trust" which is included in the Ontario system. First, it is confusing because it will be seen as an attempt to divest but is nothing of the kind and will leave the office holder under the responsibility of avoiding conflicts of interest with regard to the trust assets. Second, it may be an unnecessarily formal mechanism for accomplishing what would occur in any event routinely and informally because a minister would necessarily have to turn over the management of certain private interests while in office. He did not believe that there is value in including in a conflict of interest code a trust mechanism that may easily be misunderstood and misapplied.

(e) that the legislation should make clear that even with disclosure and divestment, the public office holder would have a continuing obligation to anticipate any remaining areas of potential conflict and to recuse when problems arise.

The Hon. Mr. Parker suggested a two-fold system for addressing the problem of ministers dealing with putlic duties and responsibilities in situations of conflict with their private interests:

(i) a minister should establish a registry of interests (identical with the minister's disclosure) so that public activities involving or relating to these private interests could be handled by others without the minister's involvement or knowledge. While this would be available to the public, its primary use would be by officials designated to see that matters involving the disclosed interests never reached the minister. By providing for ongoing disclosure and formal withdrawal, this would formalize the areas in which a need for recusal is foreseeable and minimize incidents of interruption, inconvenience and suggestions of impropriety.

(ii) where conflicts still arise, there should be the further requirement of an *ad hoc* declaration and recusal, with guidance given as to who should be informed of the problem and how the minister's public duty and responsibility is to be handled.

(f) that the office of the ADRG should be given a clearer mandate, broader powers and a higher public profile and should have clear responsibility for the administration of the federal conflict of interest law, with, at a minimum, the functions of information, education, consultation and advice; opinions and rulings; investigation and inquiry.

> The power to give opinions and rulings should include the ability to make judgment calls and "waive" technical requrements. It should have the mandate and resources to undertake follow-up investigations of compliance or to initiate fresh investigations and the capability to conduct independent inquiries. The question whether the office should have the power to issue a public report and make recommendations he left to parliamentarians and policy makers.
>
> The Hon. Mr. Parker left to others decisions about such questions as where the office should be located, how it should be structured, to whom it should be accountable, how it should be designed, and what powers it should have.

(iv) Role of conflict of interest system

The Hon. Mr. Parker thought it important to remember that *no* conflict of interest system can by itself guarantee ethics in government or prevent dishonourable conduct. Ultimately, public trust and confidence in the integrity of government depends upon the integrity of individual public office holders and their individual sense of honour. Nevertheless, it is important, in his view, to provide clear conflict of interest rules that have the force of law and that provide useful direction for the vast majority of public office holders who do perform their duties and responsibilities in good faith and with integrity.

(d) Legislation and rules affecting MPs and senators

Members of Parliament are subject to conflict of interest rules which are found in the *House of Commons Act*, the *Senate and House of Commons Act*, the Standing Orders of the House of Commons, the Criminal Code, the *Canada Elections Act*, the Rules of the Senate, and the laws and usages of the Parliament of the United Kingdom as preserved by section 18 of the *British North America Act*.

Members must not accept bribes or prohibited fees, nor can they hold offices incompatible with their membership in the House (such as an office or employment elsewhere in the government to which a profit is attached, positions such as a provincial legislator, sheriff, clerk of the peace, registrar of deeds or county Crown Attorney).

With a few exceptions, members of the House and senators may not be a party to a government contract which will result in their receiving public funds. Certain financial interests held by members and senators are considered to be incompatible with holding office and, as such, they are not permitted to vote on issues in which they have a pecuniary interest.

(e) Federal Bill C-46, the *Members of the Senate and House of Commons Conflict of Interests Act, 1989*

(i) Status of Bill c-46

Bill C-46 is a government bill. It was introduced into the House of Commons in November 1989 and given first reading. It has not yet been read a second time. It replaced Bill C-114 which died on the order paper when the 1988 election was called.

(ii) Application

The bill applies to MPs, senators, ministers (including ministers who are not members of a House) and parliamentary secretaries.

(iii) Duties

The following duties are imposed (s. 3):

- to perform duties and arrange private affairs to maintain public confidence and trust
- to refrain from accepting benefit if will erode public confidence and trust
- arrange affairs to prevent conflicts of interest from arising, a conflict of interest being (s. 2):
    - MP or senator having"significant private interests, other than permitted private interests, that afford the opportunity for the member to benefit, whether directly or indirectly, as a result of the execution of, or the failure to execute, any office of the member";
    - also including spouse having significant private interest which enables MP/senator to benefit from office
        - including conjugal relationship outside marriage
        - excluding spouse under separation agreement or if support obligations and family property have been dealt with by court;
    - also including a person who is dependent in whole or in part on the member or the member's spouse for support having significant private interest which enables the MP to benefit from office;

    - not including (s.2)
        - An MP or senator's remuneration, allowances or benefits
        - normal reasonable perquisites of office
        - a benefit as member of general public or broad class of persons;
    - and subject to permitted private interests, which are (s.2)
        - the "exempt" assets described under the present Code, with the personal property exemption expanded to include "personal property used for transportation or for household, educational, recreational, social or aesthetic purposes";
        - assets or interests having a value of less than $1000;
        - source of income yielding less than $1000 in 12 month period;
- make all reasonable efforts to resolve in favour of the public interest any conflict which arises.

(iv) Prohibitions

The following prohibitions are imposed:

- using or sharing information not available to the public to further private interest (s. 4);
- using office to influence another person's decision to further private interest (s.5);
- accepting a fee from the federal Crown or Crown agency other than compensation authorized by law (s. 6), and fees amounting to over $200 in any 12-month period must be disclosed.
- and ministers, parliamentary secretaries and party leaders may not accept any fees from anyone.

(v) Disclosure

- An MP or senator must disclose initially and annually to the Registrar of the Conflict of Interests Commission on a confidential register within a reasonable range of values and amounts prescribed by regulation
  - all assets, liabilities and financial interests;
  - income and sources;
  - positions and activities over past year;
  - "such other information as may be prescribed".
- Public declaration summarizing the information must then be prepared Registrar in consultation with the MP or senator (with Conflict of Interests Commission to decide in the event of disagreement) (s. 31), taking into account
  - the public interest in disclosure;
  - the interest in maintaining reasonable privacy with respect to the affairs of MPs.
- Same information to be filed by MP or senator for spouse and dependants:
  - originally confidential
  - the Conflict of Interests Registrar, after consulting theMP or senator and with Commission approval, may file with the MP's public declaration "such information as would be included in the member's public declaration...if the relevant and material information related directly to the member"
- Disclosure of
  - gifts over $500 in past year;
  - hospitality over $2000 in past year.

(vi) Conflict of Intererests Commission

- 3 members appointed by Governor in Council (s.9)
  - Chief Commissioner appointed for 7 year term after consultation by PM with leaders of opposition parties;

  - 1 member appointed for 5 years from among persons approved by the other party leaders;
  - 1 member, in effect, appointed on Prime Minister's recommendation.
- members ineligible for reappointment.
- functions
  - to advise MPs and senators on receipt of disclosure statements of any action which the Commission thinks required to ensure that the MP or senator fulfils obligations (s. 10)
  - where satisfied that an MP or senator fulfils his obligations
    - may so certify;
    - and MP or senator may rely on certificate for all purposes of the Act;
  - may designate an asset to be a "permitted private asset" (s. 10);
  - may provide an MP or senator with opinion interpreting Act and regulations in respect of specific factual situation (s. 11)
  - may consider any matter with respect to a duty or obligation of an MP or senator (s. 12)
    - on its own initiative;
    - on receipt of an inquiry from
      - the PM in the case of a Minister or Parliamentary Secretary,
      - the Senate or the House of Commons in the case of a senator or MP;
    - with powers under the *Inquiries Act*
    - having concluded that the MP or senator has not failed to perform his obligations, shall
      - certify without reasons
        - to the MP or senator

            - copies to
                - the PM for a Minister or Parliamentary Secretary
                - Speaker of appropriate House where there was an inquiry from the House
                - to the party leader in the House if the Speaker gets copy
        - give the MP or senator reasons if he so requests.
    - having concluded that the MP or senator has without reasonable justification failed to fulfil a duty or obligation,
        - report to
            - the MP or senator;
            - the Prime Minister if the MP or senator is a minister or parliamentary secretary;
            - the Speaker of the appropriate House where the matter was considered as a result of an inquiry from a House or on the Commission's initiative;
            - and, where a report has gone to a Speaker, to the leader of the member's party in that House.
        - with information to enable the addressees to determine what, if any, further action is warranted.
- may waive or vary post-employment prohibitions on a minister or parliamentary secretary with or without terms, and may grant a monthly payment in cases of hardship
- may pay costs to an MP or senator who, or whose spouse or dependants, have reasonably incurred costs in preparing information, in complying with advice, obtaining a certificate of compliance or in responding to inquiry.

(vii) Imposition of sanctions

- failure to comply with anything but post-employment restrictions not punishable as breach of statute (s. 45)
    - except for post-employment provisions (which will be punishable)
- where certificate of opinion that MP or senator has failed to comply is sent to a Speaker in response to an inquiry from a House (s. 46)
    - certificate is permanently referred to committee designated by the House
    - if committee, after giving hearing, agrees, it may recommend
        - reprimand;
        - fine not to exceed $20000;
        - member be ordered to pay compensation to an injured party;
        - MP's seat be declared vacant;
        - senator be requested to resign.
    - House must take up, deal with and dispose of report of committee.
- where certificate sent to PM at PM's request giving opinion that minister or parliamentary secretary has failed to perform obligations
    - no stated sanction;
    - sanction left to PM.
- where Commission has acted of its own initiative, bill is silent after certificate is sent to MP or senator.

2. ONTARIO

(1) Inquiries and reports

(a) The Aird Report (Report on Ministerial Compliance with the Conflict of Interest Guidelines and Recommendations with respect to those Guidelines, The Honourable John B. Aird, September 1986)

(i) Summary and comments

The *Ontario Members' Conflicts of Interest Act* has adopted the general pattern and many of the specific provisions recommended by the report, though it goes on to apply the proposed system to MLAs as well as ministers. The report is therefore of considerable significance.

The pattern also resembles in many ways the pattern of federal Bill C-46, which, in turn resembles that of the Starr-Sharp report. There are, of course, differences. The Aird Report, for example, contemplates a single Commissioner chosen by the Legislature rather than the Bill C-46 Commission chosen, in effect, by the party leaders; and the Aird Report would allow the Commissioner, upon finding that an MLA is in breach of his duty, to recommend a sanction, while Bill C-46 would not. The similarities, however, outweigh the differences.

(ii) Nature of Inquiry

In July 1986, after two cabinet ministers had had to resign because of allegations of conflicts of interests, the Premier of Ontario asked the Hon. Mr. Aird

(a) to examine the disclosure statements filed by ministers to determine whether the ministers had complied with the Premier's guidelines; and

(b) to consider the entire question of conflicts of interest and make recommendations for new rules regarding ministerial conduct and new mechanisms for implementing and enforcing those rules.

The Hon. Mr. Aird met all ministers and obtained copies of their recent income tax returns. In some cases, he made inquiries from ministers' legal and financial advisers. He reviewed files on which an Attorney General's lawyer had given advice to ministers about the guidelines and the information which ministers had given to a lawyer who was retained by Premier Peterson at the inception of his administration in 1985 to advise ministers on the requirements of the guidelines. The report does not disclose significant consultation on the other matters covered by it, and it appears to have been prepared by him with the assistance of counsel. It does disclose that Mr. Aird commissioned a review of the literature pertaining to conflict of interest regimes, which review, he said, revealed "that the Canadian public has diminishing faith in the integrity of its elected officials".

It will be noted that the Aird Report and the Caplan Report (as well as a report with respect to another former minister, Mr. Fontaine, were being prepared simultaneously and were issued at almost the same times.

(iii) Disclosure by existing ministers

The Hon. Mr. Aird formed the opinion that the Premier and ministers had complied with the rule that they must never prefer their private interests to the public interest. However, he found that 15 ministers had committed technical breaches of the guidelines, including the Premier who had promulgated them. The reasons were: (a) items were overlooked because they were immaterial; (b) items were omitted on the basis of wrong or misleading advice; and (c) items were omitted because there was simply not enough attention paid to the problems.

(iv) The existing Premiers' guidelines

In the Hon. Mr. Aird's opinion, a major defect of the guidelines was that they were not written clearly. For example, he questioned

(a) how far a requirement to disclose certain assets, "whether held directly or indirectly" goes. "How far must the chain of share or debt interests be extended under the classification of indirect holdings? Is the provision designed to require the Minister to do extensive research and catalogue all of the interests held by a corporation through a chain of subsidiaries, as well as all of the loans made by (and perhaps to) every subsidiary?"

(b) what constitutes "occupation" for the exemption from disclosure of land "occupied" for private residential or commercial us.

(c) whether the prohibition from purchasing, directly or indirectly, land or interests in Ontario, or interests in land development companies carrying on business in Ontario, is intended merely to prohibit ministers and their families from becoming personally involved in land dealings, or whether it goes on to preclude all minority shareholdings in private corporations which deal in land.

(d) what the "normal business" purposes are for which an exception allows a private company to acquire, e.g., whether it extends to the acquisition of an inventory of land by a development company, or whether it covers only such things as the acquisition of land to build a factory.

(e) whether a prohibition against contracting with "the government" covers only ministries or whether it extends to boards and commissions established by statute or even hospitals, school boards and provincial Crown agencies.

(f) what is to be done with a personal contract with the government, in view of the fact that private companies can contract if the minister's or spouse's interest is put into a blind trust, and whether a minister's spouse can be employed by the government.

(g) what the requirement that ministers must abstain from "day to day participation" in business activities means.

(h) whether the guidelines left it open to name more than one trust for a blind trust and whether, if only one is a licensed trust company, that one must be active in the trust.

(i) whether the provision that the guidelines were not exhaustive meant that ministers could be found in breach of the guidelines in respect to situations not spoken to in the guidelines.

(j) what is to be done with things like mutual funds, self-directed RRSP's, investment clubs and cash deposits in trusts which are subsequently converted to publicly-traded shares.

(k) whether it was intended that holdings that are practically without value be declared. (His findings about specific breaches indicate that that is the effect of the guidelines, whatever the intention may have been.)

The Hon. Mr. Aird found that there was a second problem with the guidelines which was related to the difficulty of interpreting them, namely that there was no place to go for sanctioned answers to questions. No one could always tell precisely what was required, and no minister could rest assured that he or she had complied with the guidelines despite honest and diligent efforts to do so. Such a system he declared to be unfair to ministers, and it did not satisfy the genuine public need to have a clear and enforceable set of rules.

The Hon. Mr. Aird also found that the then existing system failed to require that ministers be made aware of the necessity of paying close attention to the requirements of a conflict of interest regime. Sending ministers the guidelines and a form to complete (which itself was deficient and might even be misleading in some cases) was not enough. "What is required is a system which both enables and requires the Ministers and their spouses to make informed and scrutinized disclosure".

(v) Recommendations of the Aird Report

The Hon. Mr. Aird recommended:

(a) that legislation should be enacted to provide the public with a coherent, written set of principles and to provide ministers with a reasonable system to assist them in conforming to those principles.

(b) that a "Commissioner of Compliance" should be appointed to ensure that ministers are not overwhelmed by the demands of their positions in their efforts to comply with conflict of interest rules, to ensure continuous monitoring of ministerial activities, and to provide advice and guidance to ministers.

The Commissioner would be the keystone of the new system. The individual filling this role must be seen by the public as independent and authoritative and should therefore be chosen by the Legislature in the same manner as the Ombudsman.

(c) that the legislation should apply to spouses and dependent children of a minister.

The Hon. Mr. Aird found the question of spouses to be very difficult, and the report refers at length to the contrary arguments, based on the propositions that it is wrong to treat a spouse as an extension of a minister, that increased participation of women outside the home and the progressive erosion of social barriers to the full participation in political and economic life have rendered unacceptable the treatment of a wife's interests as secondary to those of her husband as the "public" partner, that the desire of either spouse to seek elected office may now imply restrictions upon the other partner's legitimate professional, economic and social activities, and that individuals, particularly women, may be constrained from entering public life in fear of the restrictions it may place on their spouses.

His primary reason for his recommendation was his concern that we ensure public faith in government and its workings. Requiring disclosure by only one spouse would be incompatible with the recognition by family law of the spousal relationship as a partnership of equals. "There is also an undoubted public perception that spouses share economic interests and confidences. A system which does not require disclosure of a spouse's assets will therefore not attract public trust".

(d) that the legislation should not apply to parents, siblings and adult children of ministers.

While these may not always be independent, the line must be drawn somewhere.

(e) that the Commissioner of Compliance have the following specific functions:

(i) to meet a potential minister and the minister's spouse before the appointment of the minister, obtain complete disclosure of assets and liabilities, review the minister's economic affairs and require production of such documentation as is thought necessary

This would ensure that nothing is forgotten, provide the basis for ongoing monitoring, and enable the Commissioner to provide guidance as to how property must be dealt with.

(ii) to provide a public disclosure of information, which need not require the disclosure of assets and liabilities so long as a meaningful description is made public. (A minister's address need not be made public.)

(iii) to meet the minister and spouse annually and to make all appropriate new information public.

(iv) to give confidential advice to a minister with respect to any anticipated conflict.

(v) to decide whether or not a minister has complied with the legislation, the Commissioner's decision to be authoritative and final.

(vi) to exercise the investigative powers of a commissioner under the *Public Inquiries Act*.

(vii) to conduct, upon the requirement of either the Premier or the Legislature, an investigation into any breach of the legislation by a minister, the report to be public if requested publicly.

(viii) to act as sole trustee of a minister's blind trust, or to nominate a sole trustee, and, in the latter event, to receive reports at least annually from the trustee.

(f) that ministers should not be required to divest themselves of any assets, full and continuous disclosure of property and of business dealings with the government (including ministries, agencies and Crown controlled corporations) being sufficient.

(g) that as an alternative to disclosure, a minister should be able to put any property or business into a truly blind trust of which the Commissioner or the Commissioner's nominee is the trustee, the mechanics of the blind trust to be dealt with by the Commissioner.

(h) that the Commissioner should furnish to the Provincial Auditor a list of all ministers who have blind trusts, along with the names of spouses, minor children, and every business entity in which any of them has an interest which is material (as determined by the Commissioner), and that the

Provincial Auditor should annuary report a listing of all financial transactions between the government and the people and entities on the list.

(i) that ministers should be precluded from participating actively in any business or being directors or officers of corporations.

(j) that rules should be included in legislation to advance the following goals:

  (i) that a minister not make use of confidential information for any purpose except the advancement of the public interest.

  (ii) that a minister not use his or her position to advance his or her private interests.

  (iii) that a minister who knows that a decision is being made that may cause a personal benefit, other than a public benefit of general application which benefits the minister along with other members of that public, disclose the fact and withdraw from the decision-making process.

(k) that the Premier should be responsible for dealing with a minister once the Commissioner's findings are made public, the public assessment of the government being the appropriate mechanism for ensuring that the minister's actions receive the appropriate response.

The Hon. Mr. Aird noted that the *Criminal Code* and *Legislative Assembly Act* disqualification provisions will remain in place.

(l) that former ministers should be restricted from personally acting on behalf of private sector employers in dealings with government ministries for one year after leaving office, observance of the restriction to be monitored through requiring that ministers currently holding office disclose to the Commissioner all contacts made for business purposes to that ministry by former ministers during the one year period.

The Hon. Mr. Aird thought that it would be unfair to require that former ministers not accept employment with specific types of business entities immediately upon leaving the cabinet, and that such a regime would be unenforceable.

(m) that the Commissioner should be given some discretion in deciding whether or not ministers have acted reasonably, for example, if there has been non-disclosure of a totally immaterial asset or if something happens in the government that causes a private benefit upon a minister who had no knowledge of the event, and that the Commissioner should have some degree of discretion to prevent the application of the conflicts standards in such a way as to lead to an unreasonable result (common sense and reasonableness being as valuable in this area as others and possibly essential in order to counteract a tendency to "moral inflation" when judging the conduct of those who govern.

The Hon. Mr. Aird attached draft legislation to the report for discussion purposes. The draft legislation includes the following:

(a) the following definition of "conflict of interest": "a situation where the personal benefit of a Minister or of a Minister's spouse or dependent child could reasonably be perceived to interfere with the Minister's decision-making process".

(b) the following additional prohibitions:

  (i) a prohibition against a minister knowingly placing himself or hersel in a conflict of interest.

  (ii) a prohibition against attempting to influence any decision of the Crown, a ministry or Crown agency, where the minister knows that the decision would secure a personal benefit.

  (iii) a prohibition against a minister receiving compensation for services which would reasonably be perceived to be the exercise of the services of a minister or for influencing a decision of the Crown, a Crown agency or a ministry.

  (iv) a prohibition against accepting any fees, gifts, gratuities or other benefits which could reasonably be perceived to influence his or her decisions as a minister.

(b) The Caplan Report (Reports of the Standing Committee on Public Accounts on the allegation of conflict of interest concerning Elinor Caplan, M.P.P. September and October 1986)

(i) Summary and comments

It is rather disturbing that in this case the minister was found at fault because of her spouse's actions. The minister's only personal fault was that she was not sufficiently vigorous in her inquiries about what her spouse was doing. Imposing sanctions upon an elected official because of what the official's spouse has done without the official's knowledge may be necessary to protect the integrity of a conflicts of interests system, but the necessity of penalizing A for something done by B is a downside to a conflicts of interests system which should be recognized.

It is also rather disturbing that the finding was made on the basis of an interpretation of the then existing Ontario Premiers' guidelines which is by no means inevitable. The guidelines prohibited a private company in which a minister had an "interest" from becoming contractually involved with the government. Not many readers of such a prohibition would realize that a person who has a consulting contract with a company has an "interest" in that company, and, indeed, the Attorney General's lawyer who had advised ministers about the guidelines for years did not interpret the term that way. It is true that ministers and their spouses should realize that they should not lobby the government whatever formal rules may say, but it is also true that "guidelines" should not lead to a finding of breach unless they say clearly what they apply to.

If the Standing Committee's interpretation were applied to the Alberta Premiers' guidelines to ministers, it would seem to require a minister to include in the minister's disclosure statement a private company with which the minister's spouse had a similar service contract, whether or not the investment was to be obtained from government sources. This would be a hidden trap. The minister's spouse did indeed have an interest in the transaction, but that is a different thing from saying that he had an interest in the company.

The general recommendations of the Standing Committee on Public Accounts are of interest. While recommending that the Premier remain responsible for compliance with conflict of interest guidelines, the standing committee went on to recommend that a legislative regime be adopted, with clearer rules and with provision for appropriate interpretation, enforcement and monitoring mechanisms, with an arbiter for compliance who would be an officer of the Legislative Assembly appointed in the same way as the Ombudsman and the Auditor General and a non-partisan appointee operating under the jurisdiction of the Assembly to give advice. The standing committee thought that there should be more complete disclosure. It did not recommend abolition of the blind trust but thought that, if appropriate at all, it should be structured to protect against benefit to the minister.

It is interesting to note that the standing committee attached blame to the Premier for not enforcing the guidelines. Both here and in the Fontaine report the committee thought that, at the very least the Premier should have a system for monitoring compliance. It is not entirely clear how the Premier could have discovered a breach which was not known even to the minister, but it might be that a more vigorous follow-up would cause ministers to keep after the subject and find out more facts.

There is a good deal of similarity between the recommendations of the standing committee and the recommendations of the Aird Report, except that the former recommended against any post-employment restrictions on ministers, while the latter recommended a fairly limited restrictions. The *Ontario Members' Conflicts of Interest Act* contains more extensive post-employment restrictions than were recommended by either report.

It should be noted that this appendix includes a summary of this report but not the contemporaneous *Report on Allegations of Conflict of Interest Concerning Rene Fontaine, M.P.P.*, as an additional summary seems likely to yield diminishing returns.

(ii) Nature of Inquiry

The Ontario Legislature, on a motion by a government minister, referred to the Standing Committee on Public Accounts for consideration and report a matter of alleged conflict of interest concerning a minister.

(iii) Facts

The minister came into the Legislature for the first time with the Peterson administration in 1985. Shortly thereafter, she was appointed to the cabinet.

The minister's husband, through his private company, was a financial consultant to a company which sought equity participation from an Ontario government agency which was established to make investments in business corporations. Under his retainer, he could acquire an interest in the company plus a lump sum payment if the grant was received. He was advised by the lawyer who had been advising ministers about the guidelines and the lawyer who was reviewing Premier Davis's 1972 guidelines for the new administration that he could not be associated with the client under this retainer, and that he could not under any circumstances be on the "front line" of negotiations for any company trying to get provincial funding.

The husband did terminate the retainer. However, he continued to act as a consultant for the client "on an internal basis only". In addition, he continued to be shown as the client's vice-president, finance. Later, when the negotiations between the client and the government agency reached a critical stage, the client exerted pressure on the husband to take a direct part in the negotiations, and the husband agreed, having concluded that if he did not do so he would, under the emergency circumstances which existed, be putting the client's financial future in jeopardy. He apparently was of the opinion that his activities were not in conflict with the guidelines as the new retainer provided only for a lump sum payment and not for equity, but did not ask for advice at that time.

The husband took part in the negotiations, which resulted in the making of an investment by the government agency. There is nothing in the facts to suggest that the husband attempted to exert any influence based upon his relationship to the minister (who had nothing to do with the granting agency) or that the agency would not have made the investment anyway. On the other hand, it is clear that the agency's negotiators were aware of the relationship and that it was disclosed to the agency's board of directors when they approved the investment.

It seems that the husband did not receive the lump sum payment because the investment agency required a letter saying that he had nothing coming from the investment. However, the $2000 per month fee which was provided for in the retainer was increased to $8000 per month and paid for two months.

The minister did not take any part in all this and had no contact with the investing agency, which was not under her jurisdiction. It appears that she did not even know of the negotiations or of her husband's continuing relationship with the client. However, the matter became public and, when her explanation was not accepted by the opposition, she felt impelled to resign. She was later reappointed to the cabinet.

(iv) The Standing Committee's views about the case

The standing committee was "profoundly concerned" that there were different interpretations of the Premiers' guidelines. (Premier Peterson's 1985 guidelines replaced Premier Davis's 1972 guidelines in September 1985, but were mostly the same, and the differences do not appear to have been relevant.)

Both sets of guidelines included a prohibition against ministers and private companies in which a minister has an "interest" becoming contractually involved with the government (unless the contract is available evenhandedly to all members of the public or a specific class of members or unless the private company has been placed in a blind trust). The disclosure requirements and the restrictions applied to ministers' spouses and minor children as well as to ministers. The question on which the standing committee's decision turned was whether the minister's spouse had an "interest" in the client company.

The standing committee reviewed a number of dictionary and judicial definitions of "interest" and concluded that the word goes much farther than the interests of a proprietary or beneficial nature which the Attorney General's lawyer who had advised ministers over the years thought were the only interests covered by the guidelines. It was of the view that a relationship under which (a) there is some involvement between the minister (or family member) and the private company in question; (b) the interest is more than a mere passive association and involves some active conduct pursuant to some legal or similar duty; (c) the involvement should contribute measurably to the company's business operations and prospects; and (d) any contractual involvement between the private company and the government would likely improve the status or lot of the minister (or member). It went on to say that a minister who becomes directly involved in discussions and negotiations with the provincial government in pursuit of such contractual involvement has an interest in the company. The minister's husband therefore had an "interest" in the client, which was a private company.

The investment made by the investment agency involved the purchase of equity from the client company. There was therefore contractual involvement. The standing committee found that this was not excepted from the guidelines as being an involvement of a kind which was available to the public or a class of the public. It thought that this exception had to do with benefits under government social programs such as medicare and crop insurance and did not cover discretionary decisions such as the one in question.

The standing committee referred to the provision in the guidelines that they do not embrace all possible situations representing or suggesting a conflict of interest". It thought it unfortunate that the provision does not give guidance.

The standing committee's view was that the consciousness of the agency's personnel that some people associated with the client were close to the government may have been one of the factors which weighed upon the agency with respect to the investment in the client. They "may have sought to change the government's position with regard to the future of the Corporation [which was in jeopardy at the time] and their own careers". The weight given "is not capable of precise and accurate judgment".

The standing committee, in a supplemental report, recommended that the minister should not be reappointed to the Cabinet before the launch of a new process to better govern conflicts of interest through legislation. Her husband's role as an officer of the client and his involvement in the negotiations with the investment agency were a "clear breach" of the guidelines and a conflict of interest. It was the minister's responsibility "to be certain that she and members of her family acted at all times in compliance with the guidelines. Her assertion of ignorance of her husband's activities is not a defense. It was her responsibility and obligation as a Minister of the Crown to know". The Premier was also at fault for failing to enforce the guidelines he had adopted.

(v) The standing committee's general views

The standing committee was asked to determine whether the guidelines imposed adequate and/or clear obligations and restrictions on ministers. Its answer was no. It recommended

- that the guidelines be replaced by legislation or regulations.
- that the role and plain meaning of new conflict of interest provisions should be clarified to allow for unequivocal interpretation and advice.
- that appropriate interpretation, enforcement and monitoring mechanisms should be developed.
- that provision should be made for a non-partisan and independent arbiter for conflict of interest compliance.
- that ministers should remain responsible for compliance and that the Premier should remain obliged to monitor compliance.
- that a blind trust provision, if appropriate, should be carefully structured to protect against a minister directly or indirectly benefitting from or providing a benefit to his holdings, and must define precisely the responsibilities of the trustee.

The standing committee also recommended

- that obligations be applicable to ministers, their spouses and children who continue to reside with or are dependent upon ministers and their spouses.
- that post-employment restrictions not be imposed, as being unwarranted at that time.
- that disclosure statements be made more comprehensive, that ongoing disclosure be required, and that ongoing disclosure requirements be monitored.
- that an arbiter for compliance be an officer of the Legislative Assembly appointed in the same manner as the Ombudsman or the Provincial Auditor, and that advice on interpretation and compliance be provided by a non-partisan appointee operating under the jurisdiction of the Assembly.
- that apparent conflicts of interest be avoided as conscientiously as actual conflicts, and that that principle be included and emphasized in new laws or regulations.

(2) Legislation

In 1987, the Ontario Legislature enacted the *Members' Conflict of Interest Act*. This statute

- imposes prohibitions on MLAs and further prohibitions on ministers designed to avoid acting in conflict of interest situations and accepting gifts and benefits connected with their offices
- establishes a Conflict of Interest Commissioner with responsibilities throughout the conflicts of interests system
- provides for a financial disclosure system under which ministers and MLAs make complete confidential disclosure to the Commissioner, who prepares a filtered public disclosure statement
- empowers the Commissioner to give authoritative advice about ethical duties under the statute
- provides for the investigation by the Commissioner of allegations of conflicts of interests received from the cabinet, the Legislative Assembly and MLAs, and for reports by the Commissioner to the Legislative Assembly, which has the power to make findings and impose sanctions
- prohibits former ministers from soliciting or accepting, on anyone's behalf, Government contracts and benefits, except

- contracts of service with the Crown
- contracts available to all persons similarly entitled under the same conditions

PART 4

ALBERTA MANITOBA AND SASKATCHEWAN: SOME SELECTED ITEMS

1. ALBERTA

The Brennan Report, *Report of a Public Inquiry*, The Hon. Mr. Justice W.R. Brennan, 1982.

Proposals had been made for the annexation of a large area to the City of Edmonton. The Alberta Government was carrying out the confidential assembly of a land bank for the benefit of the City. Mr. Justice Brennan was appointed to conduct an inquiry into allegations which had arisen from various associated events.

Allegations had been made that two companies in which former cabinet ministers were involved, in one of which a former executive assistant to a cabinet minister was also involved, had obtained confidential information about the Government's intentions as a basis for acquiring land in the area and thus making a profit. Other allegations were made that former cabinet ministers, acting as consultants to interested companies, had obtained confidential information. Mr. Justice Brennan found that these allegations were not justified.

An allegation had also been made that a cabinet minister had taken part in cabinet proceedings relating to the proposed annexation without disclosing that he was a shareholder in a company which had an interest in land in the area annexed. Mr. Justice Brennan found that, although it was true that the minister had the interest as alleged, he "was not consciously aware" that the land was in the annexation area. However, the commissioner found that the minister "should have been aware" that it was, and that his carelessness amounted to negligence. He was aware that the lands were "at least in fairly close proximity to the general area" being considered for annexation, and he could easily have checked.

Two passages from the report relate to the general question of lobbying by former cabinet ministers.

Page 56

> The evidence in the Inquiry made it abundantly clear that former Cabinet Ministers have a very distinct and definite advantage over other lobbyists or persons who wish to present their views on a particular matter to

> members of Cabinet. A former Cabinet Minister has no problem arranging to meet with a current member of Cabinet. Indeed, it is obvious from the evidence, that such meetings can be, and are frequently held without any prior appointment but by simply dropping in at the office of the Minister one wishes to see. The evidence makes it clear that it is generally otherwise with other persons...It does seem to me that to allow this situation to continue is unfair to those persons who desire, and have a right, to present a case to members of Cabinet, but do not have the wisdom or the wherewithal to retain the services of a former Cabinet Minister to do this for them. It is apparent that decisions on the matter on which they wish to be heard can well be made prior to the time of the appointment which they have been able to obtain.

Here is should be noted that the the representations made by, or in company with, former ministeres had not been successful.

> Page 60
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> Finally I wish to comment on the matter of former Cabinet Ministers or persons formerly closely associated with the Government speculating or being associated with companies which speculate in a financial way on decisions to be made by the Government. Whether or not such speculation proves to be accurate, but particularly so if it is, an ugly cloud of suspicion of impropriety on their part will almost certainly descend upon them.

Here it should be noted that the commissioner had found that the suspicion of impropriety in fact in the particular cases had been disproved.

2. MANITOBA

(1) The Freedman Report, *Report of the Commission of Inquiry in the Matter of Mr. Wilson D. Parasiuk,* The Hon. Samuel Freedman, 1986

Reference is made to the Freedman Report, not for the purpose of illustrating the need for a conflicts of interests system or of suggesting what an appropriate conflicts of interests system would be, but in order to point out that there is a price to be paid for maintaining a conflicts of interests system. In this case, that price, in the form of serious distress and damage, was paid by a perfectly honest individual.

Allegations were made in the media and in the Legislature that a cabinet minister had acted improperly and in conflict of interest. He resigned. An inquiry was called. He was vindicated.

The principal allegation was that the minister's ministry gave out a valuable consulting contract to a partner of the minister. In a sense, the allegation was perfectly true. The ministry gave out the contract. The minister owned one unit in a limited partnership which owned a building, and the alleged partner owned another unit in the same limited partnership.

To say that the owning of units in the same limited partnership, without more, makes two individuals "partners" in any sense of the word which includes common general interests is absurd. The minister made an investment which was managed by someone else. So did the other partner. Like other limited partners, they were no more "partners" in any real sense than are shareholders who have put money into a company with a real estate investment.

The inquiry commissioner had no problem in saying not only that there was no evidence that anything was wrong, but that in fact everything was all right. However, the minister had had to resign and had had to go through trial by media and by commissioner. Without taking into account that the minister had had nothing to do with the awarding of the contract, and without taking into account that whatever the investment was had been put into a blind trust and the minister said that he didn't know that the trust still owned it, there was nothing worth the powder needed to blow the allegations away.

A even less substantial allegation was that the minister had, at Treasury Board, taken part in a decision to award an architectural contract to an architectural firm which was a tenant in the building owned by the limited partnership. This indicates the lengths to which these things can be taken.

This story does not lead to the conclusion that there should be no conflicts of interests system. It does show the danger of effectively criminalizing additional areas of activity, and it does show the need to provide safeguards upon the imposition of heavy sanctions upon people whose official conduct has not been and could not have been influenced by private interests.

(2) The Legislative Assembly Act, R.S.M. 1987 c. L110

Part 1 of the Manitoba *Legislative Assembly Act* deals with the qualification of MLAs, and in particular with Crown employment, contracts and payments. The pattern is similar to the pattern of the counterpart provisions of the Alberta *Legislative Assembly Act*, which are described in Appendix 3.

(3) The Legislative Assembly and Executive Council Conflict of Interest Act, R.S.M. 1987 c. 112

(a) Declaration of interest and withdrawal or delegation

"Direct pecuniary interest" includes a right to payment for representing someone.

If an MLA or a dependent has a direct or indirect pecuniary interest in a matter which comes before a meeting of the Legislature, a committee of the Legislature, or a

Crown agency on which the MLA serves, or if an entity to which the member or a dependant owes money, the MLA must declare the interest, withdraw, and not attempt to influence the matter, and a public record of such disclosures is to be kept. A minister is under the same duty with respect to cabinet meetings, though there is no provision for a public record. It seems that MLAs and ministers who are not in attendance at a meeting at which

A minister must delegate to the cabinet or a cabinet committee all dealings with such a matter which arises during the exercise of his office.

(b) Untendered contracts

A public record of all untendered contracts is to be kept.

(c) Disclosure of financial interests

An MLA or minister must file with the Clerk of the Legislative Assembly, within 15 days after the beginning of a session, a statement of the assets, interests, gifts (other than gifts from family members) and government contracts in accordance with a list contained in section 12 and must file a further statement upon acquisition or disposition of an interest. Disclosure of interests in corporations is limited to those in which an MLA or minister has a capital interest of 5% or greater and those from which the MLA or minister receives remuneration. Assets worth less than $500 and gifts worth less than $250 need not be disclosed. The interests of spouses, ostensible spouses and children of any age must be disclosed, but only if the spouse or child is resident with the MLA or minister.

An MLA who does not file the initial disclosure statement on time is suspended without pay until he does, and if he does not file before the end of the current session, he is disqualified from office. No court proceedings are required, and the Legislature may determine the matter.

(d) Rules of conduct

An MLA, minister or senior public servant is prohbited:

(a) from using for anyone's gain information which is acquired in the course of office and is not available to the public. This applies to former office holders.

(b) from communicating with the government or a Crown agency to enter into a contract or confer a benefit in which the office holder has a pecuniary interest. This applies to former office holders for a year after leaving office.

(c) for a year after leaving offce, from entering into a contract or obtaining a benefit from the government other than a contract or benefit entered into or conferred in the course of providing routine services to members of the public.

(d) for a year after leaving office, from acting for anyone in relation to a matter in which the government or a Crown agency has an interest and in respect to which the former office holder acted for or advised the government or agency.

(e) for a year after leaving office, from taking part in an employer's deliberations, negotiations of consultations between the employer and the government or a Crown agency, or the performance of obligations of the employer under a contract with the Crown, if the MLA, minister or public servant had official dealings with the employer during the year preceding the date of leaving office.

(e) Enforcement and sanctions

With the prior authorization of one judge of the Queen's Bench (a forfeitable security deposit of $300 being required upon the application for authorization), any voter may apply to another judge for determination that a present or former MLA or minister has violated the Act. The judge can disqualify or suspend a member, impose a fine of $5000, order restitution to the government of any pecuniary gain realized in a transaction to which the violation relates, or do any combination of those things. However, if the judge determines that the MLA or minister has violated the Act unknowingly or through inadvertence, the only penalty he or she can impose is restitution.

Any person adversely affected by a transaction to which a violation of the Act relates, may apply to a judge for an order of restitution against the MLA, minister or senior public servant.

3. SASKATCHEWAN

The Culliton Report, *Report on the White Paper on a Proposed Code of Ethical Conduct for Saskatchewan Public Office Holders*, The Hon. E.M. Culliton, November 1986

(a) Basis of inquiry

The Premier of Saskatchewan asked the Hon. Mr. Culliton to hold public hearings and report about the White Paper described above, which, despite its title, was to apply only to ministers and legislative secretaries. The Culliton Report, however, deals with MLAs as well.

Neither the proposals set out in the White Paper nor the recommendations made in the Culliton Report have been implemented.

(b) Summary and comments

The Hon. Mr. Culliton's general view was that the responsibility for avoiding conflicts of interest should be imposed upon MLAs and ministers by legislation, and that openness and public confidence should be promoted by a disclosure system which, in general terms, would require MLAs and ministers to disclose all financian interests which might lead to actual or apparent conflicts. Sanctioning powers should be exercised by the Legislature upon reports from a special standing committee, which would also monitor disclosure.

Divestment should not be required and blind trusts should not be provided for.

(c) Definition of "conflict of interest"

The Hon. Mr. Culliton suggested the following definition: "a conflict of interest occurs or appears to occur, when the possibility of pecuniary or material benefit may be thought to influence an elected member's actions or conduct".

(d) MLAs' and government contracts and employment

The Hon Mr. Culliton thought that existing legislation in Saskatchewan and elsewhere adequately covers the area of a member's contractual relationship with the government.

(e) Need for rules or guidelines

The Hon. Mr. Culliton said that a detailed, careful and critical study of the 81 years since the province was established revealed not a single instance of a cabinet minister being involved in a conflict interest situation. This record indicates a conduct of public affairs which fully measures up to the standard which the public expects from those it elects to public office.

However, he thought that, while there was no immediate problem to be met, the increasing complexity of government activities was such as to make advisable the adoption of some rules or guidelines sufficient to give direction that conflict of interest situations might be avoided.

(f) Disclosure and divestment

In the Hon. Mr. Culliton's view, the primary responsibility for determining whether an actual or apparent conflict of interest arises is the MLA's, who should seek appropriate advice in cases of doubt. The basic requirement to ensure an MLA's openness and to assure avoidance of conflict of interest situations is complete public disclosure of all those interests which conceivably could be the cause of a conflict of interest, though not the pecuniary values of such interests, and subject to exemption of a number of personal and private interests as set out in the White Paper. There should be no requirement of divestment, which would discourage participation in public life.

He thought that a blind trust would not serve any purpose, and requiring that an MLA's interests be placed in a blind trust would discourage people of ability and integrity from entering public life.

(g) Investigation and enforcement

The Hon. Mr. Culliton thought that investigation and enforcement should be referred to a standing committee of the Legislature, most appropriately a special standing committee. This would recognize the supremacy of the elected body and provide the vehicle for handling and reviewing all disclosures. A range of penalties should be provided for, and imposed by the Legislature after receiving a report from the proposed standing committee.

He thought that "there is no doubt...that any invesigation by the committee would be thorough and completely fair. The fact of judgment by one's peers would in itself be the strongest deterrent. As the philosopher Voltaire said when contemplating trial by his peers - "I would sooner be judged by a lion of noble birth than be a thousand rats of my own ilk"".

(h) Restrictions on ministers' outside activities

The Hon. Mr. Culliton recommended legislative amendments to preclude ministers from practicing a profession on a day-to-day basis; actively managing or operating a business or commercial activity if a conflict with his or her duties is likely to result or be seen to result; serving as a consultant for reward; retaining or holding directorships in any financial or commercial operation (though a minister might, with the Premier's approval, retain non-profit directorships.)

(i) Ministerial conflict of interest

The Hon. Mr. Culliton recommended that the legislation be amended to require a minister to report to cabinet that he or she has or appears to have, directly or indirectly, a personal or pecuiary conflict of interest in respect of a matter which comes before cabinet, and to require the minister not to participate in any decision respecting the matter. He also recommended that a minister who has such a conflict in respect of any matter coming before the minister be required to report that fact to the Premier and that another minister be designated to act for the minister in the exercise of the minister's authority or discretion or in the performance of the minister's duty.

(j) Legislative approach

Had there been no legislation, the Hon. Mr. Culliton might well have recommended a directive couched in general language placing upon the MLA the responsibility for avoiding a conflict of interest situation. Legislation having been adopted, he thought it would be inadvisable to depart from that policy.

He did not think that it would be wise to attempt to establish a code of ethical conduct for MLAs. A code could not encompass all possible situations, and codification has a limiting rather than a broadening result and may well defeat its very purpose by becoming a shield for the transgressor. An MLA must be solely responsible for his conduct, and members are aware of what is expected from them.

APPENDIX 5

CONFLICTS OF INTERESTS SYSTEMS

CABINET MINISTERS AND ELECTED LEGISLATORS

THE UNITED KINGDOM AND THE UNITED STATES

1. UNITED KINGDOM

As Alberta derives its parliamentary system from that of the United Kingdom (with necessary adjustments to allow for a federal system and a unicameral legislature), the background law of the latter is similar to the background law of the former. This includes the power of the House of Commons to punish or expel a member.

House of Commons' resolutions provide for MPs furnishing information to a Registrar of Members' Interests of information of pecuniary interests which might be thought to affect an MP's actions, speeches or votes. The information includes

- remunerated employment, offices, trades, vocations, and directorships
- names of clients for whom personal services are rendered which are related to the MP's membership in the House
- certain financial sponsorships
- companies or other bodies in which an MP, his or her spouse or infant children has a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital
- overseas visits not fully paid for by the MP or public funds
- payments or material benefits or advantages received from foreign Governments, organizations or persons
- land and property of substantial value or from which a substantial income is derived.

The House of Commons would be able to treat a refusal to make a declaration as a contempt of the House. It appears that, up to 1986, no action had been taken against the one or two MPs who refused to register their interests.

There is a House of Commons rule which requires an MP to declare a pecuniary interest before taking part in proceedings in the House or in its committees.

In the case of a vote, it appears that the fact of the interest being recorded in the Register is sufficient disclosure. The rule does not require an MP who has an interest to refrain from participating in proceedings.

2. UNITED STATES

(a) House of Representatives

The House of Representatives has from time to time adopted House rules of ethics. One of these requires that representatives conduct themselves in a manner which reflects creditably on the House. There are more detailed rules dealing with acceptance of gifts and benefits and outside employment and income. The rules are enforced by the House itself, through its Committee on Standards of Official Conduct. There is also a financial disclosure system.

A major problem has been receipt by representatives of honoraria for speeches and addresses. The rules permit a representative to receive $2000 for a single event or 30% of salary in any one year. In November 1989, the House cleared a bill which, in 1991, will prohibit receipt of any honoraria, but will at the same time effectively replace the 30% of salary so lost. Additional restrictions are to be imposed. The bill will also prohibit representatives from lobbying either House or any legislative office or represent foreign interests, for a year after leaving their positions.

(b) State governments[2]

Most state legislatures have grappled with ethics problems by refining, recodifying and rewriting their ethics statutes. Nearly every state has enacted a code that prohibits the use of public position to obtain personal benefits; the majority of these codes are in statute form. Although state codes vary greatly in length, most specify prohibited actions and identify conflicts of interest. The majority of these laws establish ethics boards, agencies, commissions or committees empowered to investigate suspect activities; many require financial disclosure of income, gifts and significant financial holdings; some attempt to prohibit certain post-employment activities such as lobbying. These various components can be categorized under the headings of: (A) *Form and Procedure*; (B) *Conflicts of Interest*; (C) *Financial Disclosure*; (D) *Post-Employment Prohibitions*; and (E) *Penalties*.

Form and Procedure

Almost all state ethics codes are embodied in state laws. Several states (Indiana, Mississippi, North Carolina and West Virginia), in addition to relying on statutory provisions, cite executive orders or administrative agency rulings to strengthen their ethics guidelines. One state, Iowa, encompasses its ethics code in house and senate rules rather than state law.

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[2] This description was prepared for the Review Panel by Susan C. Biemesderfer, Policy Specialist, National Conference of State Legislatures, Denver, Colorado. The Review Panel is grateful to her for preparing it and permitting its use.

About 35 states have established a state ethics board, agency, commission or committee. Members of such ethics units are usually appointed, either by the governor or legislative leaders. The ethics agency typically employs an Ethics Director, who heads a small staff. In some states, the Secretary of State or Attorney General acts as the ethics director.

While the powers of ethics commissions vary, their responsibilities generally include:

- interpreting provisions of the ethics code and making supplemental rules;
- investigating reported ethics violations;
- referring violations to the attorney general or county attorney for possible prosecution; and
- imposing (where authorized) administrative fines.

Conflicts of Interest

Conflict of interest provisions typically do the following:

- prohibit or limit the acceptance of gifts or additional compensation;
- prohibit the solicitation of things of value;
- restrict outside business interests and official acts affecting any personal or private financial holdings; and
- restrict official appearances before state agencies on personal or private business.

These restrictions usually apply to elected and appointed state officials and their staffs. Some state codes, however, assert jurisdiction over more or fewer people; Massachusetts, for example, extends its conflict of interest code to all appointed and elected officials at the state and local level; the Wisconsin Ethics Code, on the other hand, covers only state *officials* (and charges the Department of Employee Relations with regulating state *employees*).

In addition, states impose conflict of interest restrictions with varying degrees of stringency. In Wisconsin, for example, state employees may not accept gifts of "any pecuniary value" from lobbyists, including meals, beverages and transportation. An Alaska law sets a limit of $50 for gifts to lawmakers. And in California, lobbyists may not spend more than $10 per month for gifts to one state official or employee.

Financial Disclosure

Approximately two-thirds of the states require that public officials occupying certain positions (as well as candidates for those positions) file financial disclosure statements reflecting their income and financial holdings. In some states, legislative staff and government employees are also required to disclose financial information. These statements are filed annually and usually require the public official or employee to disclose:

- his or her total income and its source;
- amounts and sources of business income;
- location, description (and sometimes value) of real estate holdings; and
- names of creditors (usually for debts exceeding a certain minimum amount).

An increasing number of states also require disclosure of:

- gifts received from non-relatives (usually exceeding a certain dollar value); and
- business titles, offices or directorships held.

The scope of financial disclosure requirements differs from state to state. For example, Texas law requires, in part, that public officials and candidates for office disclose income from rents, stocks and other investments, debts over $1,000 and gifts worth more than a $5,000 value, debts exceeding $3,000 and real estate holdings worth more than $10,000. And in Ohio, the ethics code requires disclosure of "all fee simple and leasehold interests", debts over $1,000 and corporate investments exceeding $1,000.

In many states, disclosure requirements result in the filing of thousands of financial statements annually. Critics of this practice claim such volume prohibits review that is anything more than cursory. Advocates of disclosure, however, say that the requirements (1) do sometimes precipitate investigations of potential ethics violations, (2) force candidates and office-holders to be conscious of their potential conflicts of interest and (3) are sufficiently reviewed and cited by public interest groups and journalists to facilitate public review.

Post-Employment Prohibitions

Better known as "revolving door" provisions, restrictions on former officials and employees generally prohibit them from serving as lobbyists or advocates -- particularly within time frames or subject areas that would provide them with an unfair advantage (i.e. state agency information, inside strategy or contacts). While some states (Massachusetts, Rhode Island) include legislators and employees in revolving door prohibitions, others (Connecticut, Wisconsin) apply post-employed provisions only to the state's executive branch.

Typical revolving door provisions include prohibitions against a former official or employee:

- making an appearance before his or her former agency (usually for one year);
- becoming involved in state or legislative matters in which he or she participated as an official or employee; and
- disclosing or using confidential information obtained while in the office or while employed.

In addition, statutes in South Carolina and New Jersey specifically target situations where officials or employees might be influenced by a promise of future employment. Other state codes target very specific situations such as a former public utilities commissioner going to work for a utility directly after leaving public service. In Minnesota, for example, state law provides that: (1) former officers or employees of the Revenue Department may not represent a client in a proceeding before the department for one year following employment there; and (2) former Public Utilities commissioners and Public Service Department directors may not accept employment or any contractual relationship with entities subject to rate regulation for one year after terminating employment.

While proponents of revolving door provisions advocate drafting prohibitions that are tight and thorough, some observers caution against laws so restrictive that they discourage potential public servants.

Penalties

Penalties for violations of state ethics codes range from no penalty to removal from office and fines and/or imprisonment. Although most state ethics codes empower the ethics commission or agency to *identify* violations, the state law is then *enforced* by the state attorney general or a local district attorney, depending on the jurisdiction. As with other ethics provisions, penalties vary from state to state.

In Minnesota, for example, a public official or employee found guilty of misconduct may be sentenced to up to one year in prison and fined up to $3,000; a public official's failure to report or avoid a conflict of interest, however, is not a crime and carries no penalty. In Texas, violations of the lobby law are Class A misdemeanors, punishable up to a $2,000 fine and/or one year in jail. And in Florida, a public official in violation of the ethics code may be removed from office, ordered to forfeit up to one-third of his or her salary (for up to one year) and/or fined up to $5,000 in civil penalties.